



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00BB/LSC/2020/0002
LON/00BB/LSC/2020/0234
LON/00BB/LDC/2020/0175**

HMCTS code : **V: CVPREMOTE**

Property : **307 Barking Road, London. E13 8EE**

Applicant : **Interface Properties Limited**

Representative : **Ben Doyle (Counsel) instructed by
Thirsk Winton LLP**

Respondents : **1. Najib Khan (Flat D)
2. Jennifer Casals (Flat A)
3. Kumari Nisansala (Flat B)
4. Jivan Singh (Flat C)**

Representative : **Chris Payne (Counsel)**

Type of application : **Service Charges/Dispensation in respect
of Consultation Requirements**

Tribunal : **Judge Robert Latham
Luis Jarero BSc. FRICS**

**Date of Hearing
and Venue** : **8 February 2021 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **12 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V:SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant has provided a Bundle of Documents (204 pages) and an Additional Bundle of Documents (43 pages). Witness statements have been provided by Javan Singh and Jennifer Casals. Additional documents were provided during the course of the hearing including a Schedule of Issues in Dispute and some 30 photographs.

Decisions of the Tribunal

LON/00BB/LDC/2020/0175 (Landlord's application against all four tenants)

- (1) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act.

LON/00BB/LSC/2020/0002 (Landlord's application against Najib Khan)

- (2) The Tribunal finds that the sum of £15,922.50 which the landlord demanded on 26 February 2019 as an interim service charge towards major works was not payable as it was not demanded in accordance with the terms of the lease.

LON/00BB/LSC/2020/0234 (Najib Khan's application against the Landlord)

- (3) Service Charges for 2018: The Tribunal is satisfied that the final service charge demand of £1,430 which was made on 4 January 2019 is payable and reasonable. This includes the tenant's 25% liability for repairs to the front door (£2,400).
- (4) Service Charges for 2019: The Tribunal is satisfied that the final service charge demand of £11,811.75 which was demanded on 9 March 2020 is payable and reasonable. This includes the tenant's 25% liability for (a) £39,228 in respect of the partial completion of the major works; (b) 10% supervision fee; (c) condition survey of £800; and (d) Section 20 Consultation Fee of £800.
- (5) The Tribunal disallows the landlord's claims for administration fees of £50 and £100.

Further Orders

- (6) The Tribunal makes no order for the refund of any of the tribunal fees paid by the parties.

- (7) The Tribunal's decision in respect of Orders under Section 20C and Paragraph 5A are set out at paragraphs 56 and 57 below.

The Applications

1. The Tribunal is required to determine three applications in respect of 307 Barking Road, London E13 8EE ("the Property"). This is a three storey building with a retail unit at the front of the ground floor. There are four flats. Mr Najib Khan is the tenant of Flat D which is at the rear of the ground floor. He acquired his leasehold interest on 16 March 2016. Interface Properties Limited ("Interface") acquired the freehold interest on 17 April 2018. Since 15 July 2018, Westcolt Surveyors ("Westcolt") have managed the property on behalf of the landlord.
2. Case No. LON/00BB/LSC/2020/0002 ("LSC/0002"): On 16 December 2019, Interface issued this application against Mr Khan pursuant to section 27A of the Landlord and Tenant Act ("the Act"). Interface seek a determination as to the payability and reasonableness of an interim service charge demand in the sum of £15,922.50 which is a 25% contribution towards major works demanded in the 2019 financial year. On 27 February 2020, the tribunal gave Directions. The case was set down for an oral hearing, but this was vacated because of Covid-19. Subsequent Directions were given on 9 July and 28 August.
3. Case No. LON/00BB/LSC/2020/0234 ("LSC/0034"): On 17 August 2020, Mr Khan issued this application against Interface pursuant to section 27A of the Act. Mr Khan seeks a determination as to the payability and reasonableness of a number service charge items and administration charges included in the 2018 and 2019 service charge accounts. He does not specifically challenge the sum expended on the major works which is included in the 2019 accounts. He further seeks orders under section 20C of the Act and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). On 28 August 2020, the tribunal gave Directions.
4. Case No. LON/00BB/LDC/2020/0175 ("LDC/0175"): On 15 October 2020, Interface issued this application, pursuant to section 20ZA of the Act, against Mr Khan (Flat D); Jennifer Casals (Flat A); Kumari Nisansala (Flat B) and Mr Jivan Singh (Flat C). Interface seek dispensation in respect of their failure to comply with the statutory consultation requirements. On 26 October 2020, the tribunal gave Directions. No tenant has opposed this application.
5. The parties informed the tribunal that they were content for these applications to be determined on the papers. On 15 December, this Tribunal was convened to determine these applications. We concluded that we were unable to determine the applications on the basis of the incomplete material that had been provided. On 16 December, Thirsk Winton provided an amended Bundle of Documents. This was still incomplete.

6. On 22 December, this Tribunal issued further Directions for LSC/0002 and LSC/0234. We stated that we would determine LDC/0175 on the papers. The parties were invited to submit any additional evidence or documents on which they sought to rely by 22 January. Neither party met this deadline. However, the landlord has filed an Additional Bundle of Documents and a Statement of Account.
7. The Tribunal invited the other tenants to apply as parties to these two applications. Ms Jennifer Casals and Mr Jivan Singh have filed witness statements. Neither has applied to be a party to these applications.

The Hearing

8. Mr Ben Doyle, Counsel, appeared on behalf of Interface, the landlord. He was instructed by Thirsk Winton LLP (“Thirsk Winton”), Solicitors, who have acted for Interface throughout these proceedings. Mr Doyle adduced evidence from Mr Qalab Ali, from Westcolt, the managing agents. Mr Asad Chaudhary, a director of Interface, was also present. Mr Doyle relied on the witness statements from Ms Casals and Mr Singh.
9. Mr Chris Payne, Counsel, appeared on behalf of Mr Khan. He was instructed by Mr Khan who is a solicitor. Mr Khan gave evidence. The Tribunal gave him permission to refer to a number of photographs which sought to illustrate the low quality of the works which have been executed. The Applicant should have included these in the Bundle as they had been exhibited to Mr Khan’s 3rd witness statement. This evidence proved to have limited relevance. First, LSC/0002 involves a demand for an advance service charge and, therefore, the situation prior to any works being executed. Secondly, the works had not been completed because the landlord has not had the funds to do so.
10. Thirsk Winton have provided a number of bundles of documents. The Tribunal has had regard to
 - (i) an amended Bundle of Documents which was filed on 16 December 2020. We will refer to the page number of this bundle (“p.____”).
 - (ii) a bundle of Additional Documents which was filed on 1 February 2021. We will preface any reference to this bundle by “AD.____”).

On 5 February 2021, the landlord filed a Statement of Account, dated 4 February 2021. This shows that Mr Khan currently owes £17,002.50 on his service charge account.

11. The parties have provided the following witness statements:
 - (i) 1st witness statement of Mr Khan (7.8.20) at p.85-87. Although this is headed LSC/0002 and refers to the Directions of 9 July 2019, this rather

relates to the matters raised in LSC/0234, an application which was not issued until 17 August 2019.

(ii) 1st Witness Statement of Qalab Ali (29.8.20) at p.88-158. There are four exhibits. The pages have been mixed up in the Applicant's bundle.

(iii) 2nd witness statement of Mr Khan (24.9.20) at p.159-160.

(iv) 3rd witness statement of Mr Khan (17.9.20 - sic) at p.160a-160c. Mr Khan purports to attach a number of photographs. Thirsk Winton did not include these in either bundle and the Tribunal saw them for the first time at the hearing.

(v) 2nd Witness Statement of Qalab Ali (9.10.20) at p.88-90. The exhibits are a number of photographs. The images are unclear and there is no explanation as to what they are intended to illustrate.

12. The Tribunal has been provided with the following service charge demands:

(i) On 7 August 2018, Westcolt demanded payment of £1,545 (AD1-5). This was an interim service charge demand for 2018. A budget for the year was provided totalling £6,180. This was 100% of the budgeted expenditure for the year. Mr Khan did not pay the sum demanded.

(ii) On 4 January 2019, Westcolt demanded payment of £1,430 (at AD25-29). This was the final service charge demand for 2018. This included a Certificate of Expenditure for the year. Mr Khan disputes one item in these accounts, namely the installation of a communal door at a cost of £2,400, of which his 25% share is £800. Mr Khan asserts that only £250 is payable as the landlord has failed to comply with the statutory consultation procedures. The landlord has sought dispensation in LDC/0175. Mr Khan has not opposed this application.

(iii) On 8 January 2019, Westcolt demanded payment of £2,982.50 (p.151-154). This included an interim service charge demand for 2019 in the sum of £1,502.50. A budget for the year was provided totalling £6,110. Again, the interim charge was 100% of the budgeted expenditure for the year. The demand also included a claim of £1,480 for arrears, namely the above sum of £1,430 and an administration charge of £50.

(iv) On 12 February 2019, Mr Khan made a payment of £2,030, namely £1,630 for arrears of service charges and £600 for ground rent.

(v) On 26 February 2019, Westcolt demanded payment of £15,922.50 (p.113-115). This was an advance service charge demand for a contribution of £15,922.50, namely his 25% contribution towards the major works in the sum of £63,690. This represented the quote of £57,900 from Acumen (including VAT) and a supervision fee of 10% charged by Westcolt.

(vi) On 9 May 2019, Mr Khan made a further payment of £1,480. No contribution was made towards the cost of the major works.

(vii) On 9 July 2019, Westcolt demanded payment of £16,196.59 (p.116-119). This represented the outstanding sum of 15,922.50 for the major works and an administration charge of £96.

(viii) On 9 March 2020, Westcolt demanded payment of £10,406.75 (p.120-4). This was a final service charge demand for 2019. A Certificate of Expenditure for the year was provided (at p.121). The total expenditure for the year was £47,247. This included £39,228 in respect of the major works which had been partially completed and Westcolt's 10% supervision fee of £3,219. Mr Khan was given credit for the £1,480 which he had paid. The demand also included administration charges of £75.

13. This final demand of 9 March 2020 sets out the 2019 service charge items which we are required to determine:

(i) In LSC/0002, the landlord asks the Tribunal to determine the payability and reasonableness of the advance service charge demanded in respect of the major works.

(ii) Mr Khan asks the Tribunal to determine the payability and reasonableness of the two additional sums included in the 2019 accounts, namely £800 for a "condition survey" and £800 was "Section 20 Consultation". Both these sums are fees charged by Westcolt, the managing agents.

(iii) Mr Khan also challenges two administration charges of £150.

The Lease

14. The starting point for any service charge claim is the lease. Mr Khan occupies Flat D pursuant to a lease dated 25 February 2005 (at p.68-82). Neither Interface or Mr Khan were parties to the original leases.

15. By clause 5(4), the tenant covenants to pay the "interim service charge" and the "service charge" as specified in the Fifth Schedule. The relevant "accounting period" is 1 January to 31 December. The lessee's service charge contribution is 25%.

16. The Fifth Schedule relates to the service charge. Paragraph 1(3) defines "the interim service charge" as:

"such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or their Managing Agent shall specify at their discretion to be a fair and reasonable interim payment having regard to anticipated expenditure in the next Accountancy Period and the reserves held".

17. Paragraph 3 provides:

“The first payment of the Interim Service Charge (on account of the Service Charge for the Accounting Period during which this Lease is executed) shall be made on the execution hereof and thereafter the interim Charge shall be paid to the Lessor by equal payments in advance on the twenty fourth day of June and the twenty fifth day of December in each year and in case of default the same shall be recoverable from the Lessee as rent in arrears”.

18. As soon as practical at the end of the accountancy period, the lessor or their agent is required to certify the following: (a) the total expenditure for that accounting period; (b) the amount of the interim charge paid by the lessee; (c) the amount of the service charge in respect of the accounting period and (d) of any excess or deficiency (Paragraph 6). Any surplus is to be carried forward as a credit in computing the service charge for the succeeding accounting period. Where there is a deficiency, the lessee is obliged to pay the same within 14 day of being served with the certified statement.
19. Mr Payne, on behalf of Mr Khan, submits that the service charge demands have not been demanded in accordance with the terms of the lease:
 - (i) The interim service charges can only be demanded on 14 June and 25 December of any service charge year;
 - (ii) The interim service charge can only be 50% of the budgeted expenditure; and
 - (iii) Only two interim service charges can be demanded in any year.
20. Mr Doyle, on behalf of the landlord, referred us to Woodfall “Landlord and Tenant” (at [7.178] – [1.179]) and *Southwark LBC v Woelke* [2013] UKUT 349 (LC); [2014] L&TR 9). Relying on the Interpretation Act 1889, he sought to argue that singular includes the plural so that “interim service charge” should be read as “interim service charges”. It was therefore open to the landlord to make more than one set of demands for interim service charges in any year.
21. Mr Doyle further sought to argue that the interim service charges for 2019, were payable on 25 December 2018 and 14 June 2019. He noted that the lease was executed on 25 February 2005. The first interim service charge for 2005 was therefore payable on 25 February and 14 June 2005. The next interim payment was payable on 25 December and could only relate to an advance service charge for the subsequent year.
22. The leading authority on the interpretation of leases is *Arnold v Britton* [2015] UKSC 36. The purpose of contractual interpretation is to identify what the parties had agreed, not what the court thought that they ought to have agreed. Neither was it the function of a court to relieve a party from the consequences of imprudence or poor advice.

23. The original landlord was responsible for drafting the lease. It was for him to decide what provision to make, if any, for the payment of an interim service charge. Paragraph 3 specifies the interim service charges payable “in each year” which are to be paid on 24 June and 25 December by equal payments in that year. Whilst it may be surprising that the second interim payment is payable just six days before the end of the service charge year, this is what the lease specifies. It is not relevant when and what interim payments were payable in the first year of the lease.
24. The Tribunal is satisfied that the landlord is obliged to prepare a budget for the year. If any major works are anticipated, these are to be included in the budget. The landlord is then entitled to levy two interim service charges, each at 50% of the tenant’s contribution, on 24 June and 25 December. The Interpretation Act provide no assistance to the landlord. There is no justification for construing the lease as requiring the tenant to pay more than one interim service charge on 24 June and 25 December.
25. Applying these findings to the facts of this case, the landlord prepared budgets totalling £6,180 for 2018 (at AD.2), and £6,110 for 2019 (at p.153). In 2018, the landlord was entitled to demand interim service charges of £772.50 on 24 June and 25 December 2018. In 2019, the landlord was entitled to demand interim service charges of £763.75 on 24 June and 25 December 2019. The landlord had ample opportunity to include the major works in the 2019 budget, but failed to do so. The Tribunal is therefore satisfied the interim service charges were not demanded in accordance with the terms of the lease and were therefore not payable.
26. This is not the end of the matter. At the end of the financial year, the final service charge became payable.
- (i) On 4 January 2019 (at AD.27), the landlord was entitled to demand a final service charge of £1,430, namely 25% of the total expenditure of £5,720. The Certificate of Expenditure is at AD.26. The only item which Mr Khan challenges is the sum of £2,400 payable in respect of repairs to the front door.
- (i) On 4 March 2020 (at p.122), the landlord was entitled to demand a final service charge of £11,811.75, namely 25% of the total expenditure of £47,247. The Certificate of Expenditure is at p.121. Mr Khan challenges the advance service charge which had been demanded in respect of the major works, but not the final service charge. He also challenges the sums of £800 demanded by Westcolt for a “condition survey” and £800 for “Section 20 Consultation”.

The Background

27. On 16 March 2016, Mr Khan acquired the leasehold interest in Flat D, a one bedroom flat on the ground floor. Mr Khan does not occupy the flat, but lives in St Albans. His current tenant pays him rent of £900 per month. There have been no breaks in his lettings. On 24 August 2018 (at AD.6-21), the London Borough of Newham (“Newham”) served an

improvement notice on Mr Khan to address problems relating to dampness, pests, electrical hazards and fire precautions.

28. Ms Casals does not occupy Flat A which is on the first floor. On 18 June 2018, Newham deemed her flat to be uninhabitable because the roof had collapsed. She is anxious for the works proposed by the landlord to be completed as soon as possible.
29. Mr Singh does not occupy Flat C. Between 2017 and 2018, he had a problem tenant. The police attended the flat on some 10 to 15 occasions. The main entrance door was forced during a police raid. Mr Singh evicted his tenant, but he has continued to return to the flat. Mr Singh is also anxious for the repairs proposed by the landlord to be executed.
30. On 7 April 2018, Interface acquired the freehold interest in the property. It was in a poor condition and subject to vandalism and antisocial behaviour. On 15 July, Interface appointed Westcolt to manage the property. The management agreement, dated 15 July 2018, is at AD.31. There is a setting up fee of £150 per leaseholder, and a fixed annual fee of £250 per leaseholder. The agreement specifies those services which fall within the core agreement. Additional fees are payable for any Section 20 Consultation and for preparing, tendering and supervising any major works.
31. On 3 August 2018, Interface paid Signed Maintenance Securities £2,400 to replace the front door (see p.189). The cause of the damage is not entirely clear. It could have been a police raid. Alternatively, it could have been vandalised. There is reference (at AD.9) to drug addicts having kicked in the door on a number of occasions. It was suggested at the hearing that third parties used the common parts for sex. It is apparent that urgent works were required to the door to secure the property. The cost of the works was more than £250 per flat. Interface did not go through the statutory consultation process (which was understandable given the urgency of the works) or seek dispensation. No one objected to the works at the time.
32. On 19 September 2018, Westcolt obtained a Condition Survey from a Chartered Surveyor which recommended a range of external and internal works to the property. On 13 November 2018 (at p.180a-e), Westcolt served a Stage 1 Notice of Intention. Observations were invited by 19 December. Mr Khan did not respond.
33. Westcolt sought estimates from four contractors. Three returned quotes. Westcolt analysed these in a Tender Report (at p.138-144). An error was noted in the addition in the Acumen tender which should have totalled £47,450, rather than £48,250 (see p.142).
34. On 26 February 2019 (at p.146-9), Westcolt served the Notice of Estimates. Estimates had been obtained from: (i) Acumen Group Limited ("Acumen"): (£48,250); (ii) SGH Ventures Limited: £66,058; and (iii) Strutt & Mason Limited (£59,220). These were all exclusive of VAT. The

landlord was minded to accept the lowest estimate from Acumen. The tenants were invited to inspect the estimates and to make written observations by 3 April. Mr Khan did not avail himself of the invitation to inspect the estimate (at p.93-99). Neither did he make any observations.

35. On 26 February 2019 (at p.113-5), Westcolt issued a demand to Mr Khan in respect of his 25% share of the cost, namely £15,922.50. On 9 July (at p.116), a further demand was made. Mr Khan did not pay. On 16 December (at p.1-12), the landlord issued LSC/0002 seeking a determination as to the payability and reasonableness of the sum demanded.
36. On 26 February 2020 (at p.165), Westcolt carried out a valuation of the work done. It computed this at £32,190. This is some 66.7% of the total value of the contract (net of VAT and fees). The contractor had been taken off site because the landlord did not have the funds to complete the works.
37. On 9 March 2020 (at p.120-124), Westcolt issued a demand to Mr Khan for the sum of £11,811.75, namely the final demand for the 2019 service charge. The Certificate of Expenditure included £39,228 for the major works which had been completed, namely £32,690 + VAT of 20%. Professional fees of £3,219 were also claimed.

Our Determination

Case No. LON/00BB/LDC/2020/0175 (“LDC/0175”)

38. On 15 October 2020, Interface issued this application against the four tenants pursuant to section 20ZA of the Act. Interface seek dispensation in respect of their failure to comply with the statutory consultation requirements in respect of the replacement of the front door
39. On 26 October 2020, the tribunal gave Directions. On 2 November, Thirsk Winton sent the four tenants (i) a covering letter (at (p.184-187)); (ii) a copy of the application; (iii) a statement of case clarifying the application and setting out the relevant works for which dispensation is sought. They attached an invoice from Sign Maintenance Solutions, dated 3 August 2018, in respect of the installation of an aluminium black powder coated door and frame (at p.188-9); and (iv) a copy of the Directions. Interface contended that the door was in urgent need of replacement as a security measure. Further, no prejudice had been caused to the tenants by their breach of the statutory procedures.
40. By 13 November, any tenant who opposed the application was required to complete a Reply Form attached to the Directions and return it to both the tribunal and Interface. No tenant has opposed the application. On 22 December 2020, when we gave Further Directions, we stated that we were satisfied that we could deal with this application on the papers.
41. Section 20ZA (1) of the Act provides:

“Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

42. The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is satisfied that it is reasonable to grant retrospective dispensation from the statutory consultation requirements. This is justified by the urgent need for the works to secure the property. There is no suggestion that any prejudice has arisen. In the circumstances, it is appropriate to grant dispensation without any conditions.

Case No. LON/00BB/LSC/2020/0002 (“LSC/0002”)

43. On 16 December 2019, Interface issued this application against Mr Khan pursuant to section 27A of the Landlord and Tenant Act (at p.2-12). Interface seek a determination as to the payability and reasonableness of an interim service charge demand in the sum of £15,922.50 which is a 25% contribution towards major works demanded in the 2019 financial year. The demand (at p.113-5) is dated 26 February 2019. It is for an interim service charge. The charge is based on the tender provided by Acumen (at p.93-99).

44. During the course of the hearing, it became apparent that the parties had produced a Schedule of Disputed Service Charges. Thirsk Winton had not included this in either Bundle. At 12.28, a copy was provided to the Tribunal. Mr Khan disputed various items which Acumen had included in their tender. He had not challenged the scope of the proposed works during the consultation period.

45. The analysis by Westcolt of the three tenders is at p.138-144. There is a useful summary at p.142. There was a significant difference between the contractors on a number of items. Thus, whilst Acumen had quoted £7,650 for the external wall repairs, CGH Ventures had quoted £17,948.72 and Strutt and Mason £16,800. On the other hand, CGH Venture (the highest tender) had quoted £10,022.55 for roof repairs, Acumen had quoted £15,850.

46. The specification had included a large number of provisional sums and a contingency of £4,000. Combined, these amounted to some 20% of the tender price. This is understandable, given the limited access available to assess the extent of the repairs required. We are satisfied that an assessment cannot be made of the reasonableness of these sums quoted until the works have been completed.

47. A critical issue in this application is whether the lease allows the landlord to demand an advance service charge for these works. We have concluded that the lease did not permit it to do so. These

works had not been included in the budget for the year or the advance service charge which had been demanded on 8 January 2019.

48. Both Counsel agreed that the Tribunal should not focus merely on the interim service charge in respect of the major works. Mr Khan has challenged the final service charge demand for 2019. These accounts include the limited works which Acumen have completed.
49. On 9 March 2020, Westcolt demanded payment of £10,406.75 (p.120-4). This was a final service charge demand for 2019. A Certificate of Expenditure for the year was provided (at p.121). The total expenditure for the year was £47,247. This included £39,228 in respect of the major works which had been partially completed and Westcolt's 10% supervision fee of £3,219. The Certificate stated that 80% of the major works had been completed. However, the sum included of £39,228 represented 68% of the sum of £57,900 quoted by Acumen. Mr Khan's 25% contribution towards the sum of £47,247 was £11,811.75.
50. Mr Ali stated that Acumen is willing to return to site to complete the outstanding works in their tender within the price which they quoted. As noted, the total tender price should have been £47,450 (exc VAT) rather than £48,250.
51. The Tribunal is satisfied that it is only when the works that have been completed that a Tribunal can make a proper assessment of the quality of the works and the reasonableness of the sums charged. Thus, we find that the sum of £39,228 for the partial completion of the works is payable and reasonable. However, this does not preclude Mr Khan from challenging the final bill when all the works have been completed.
52. Mr Payne suggested that the landlord should have split the tenders. Acumen should have been instructed to carry out the external wall repairs at the price of £7,650 which they had quoted; whilst SGH Ventures should have been instructed to carry out the roof repairs at their lower quote of £10,022.55. The Tribunal is satisfied that this approach is wholly artificial. The contractors had been instructed to price the full schedule of works. The supervising surveyor had noted these differences in the Tender Report.

Case No. LON/00BB/LSC/2020/0234 ("LSC/0034")

53. On 17 August 2020, Mr Khan issued this application against Interface pursuant to section 27A of the Act (at p.13-26). Mr Khan seeks a determination as to the payability and reasonableness of a number service charge items and administration charges included in the 2018 and 2019 service charge accounts. The parties have prepared a Schedule of the items in dispute (at p.181-2).
54. Mr Khan seeks a determination as to the payability and reasonableness of the following charges:

(i) 2018: Installation of a communal door at a cost of £2,400, of which his 25% share is £800. Mr Khan asserts that only £250 is payable as the landlord has failed to comply with the statutory consultation procedures. The landlord has sought dispensation in LDC/0175 which we have granted. Mr Payne suggested that this sum was not reasonable as the landlord should have sought to recover the cost of the repairs from the police or the insurers. We do not accept these arguments. The cause of the damage is not clear. The property was insecure and the door needed to be repaired as a matter of urgency. The sum claimed is reasonable.

(ii) 2018: two administration charges of £50 and £100 which were levied on 4 January 2019 in respect of late payment of service charges. We are satisfied that the interim service charges were not demanded in accordance with the terms of the lease. The sums only became payable when the final service charge for the year had been computed and demanded. The Tribunal therefore finds that these two administration charges are not payable.

(iii) 2019: a building condition survey in the sum of £800. Mr Khan contended that this was unnecessary as a condition survey had been carried out in 2018. The Tribunal has now been provided with the service charge accounts for 2018. These accounts did not include any expenditure in respect of a condition survey. The Tribunal is satisfied that a charge of £800 is reasonable for a condition survey and that this sum is payable.

(iv) 2019: £800 charged by Westcolt, the managing agents, for carrying out the consultation in respect of the major works. Mr Khan argued that this sum is not reasonable. The Tribunal has now been provided with a copy of the management agreement between Interface and Westcolt (at AD31-43). Clause 1.2 provides that the basic fee does not extend to any Section 20 Consultation Works. The Tribunal is satisfied that a fee of £800 is reasonable for this work and is payable.

Application under s.20C and refund of fees

55. At the end of the hearing, Interface and Mr Khan applied to be reimbursed in respect of the tribunal fees which have been paid. In the light of our findings, we are satisfied that each party should bear the tribunal fees which they have paid. The parties have only had limited success of their respective applications.

56. Mr Khan applied for an order under section 20C of the 1985 Act so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge, so far as the lease may permit it to do so. The Tribunal is satisfied that the Applicant should not be permitted to pass on any part of its costs relating to the hearing. The hearing was only necessary because the Applicant had failed to prepare a proper bundle for the tribunal. Had it done so, the Tribunal would have been able to determine the applications on the papers. After

these costs are excluded, the Applicant is restricted to passing on 50% of its other costs relating to these applications against Mr Khan. The landlord has not operated the service charge account in accordance with the terms of the lease. On the other hand, Mr Khan has not made any contribution towards the cost of the major works. It seems to be common ground that the Property has been in a state of substantial disrepair. Ms Casals and Mr Singh have been anxious for the proposed works to be completed as quickly as possible. Mr Khan's failure to pay his contribution has thwarted this.

57. The Tribunal is satisfied that it would be premature to make any order under Paragraph 5A of the 2002 Act. When the major works have been completed, it will be possible to make a proper assessment of the works which have been executed. As stated, Acumen have agreed to complete the works for the price specified in their tender. It is to be hoped that Mr Khan will now pay the sums which the tribunal has now found to be due in respect of the works which have been completed. Interface must ensure that any future demands for service charges are made in accordance with the terms of the lease.

Judge Robert Latham
12 March 2021

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).