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FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2013/0788**
Property	:	**Flat 5, 20 Daleham Gardens, London NW3 5DA**
Applicant	:	**Mr R. Ellis (Leaseholder)**
Representative	:	**In person**
Respondent	:	**20 Daleham Gardens Ltd (Lessees' Management Company)**
Representative	:	**Mr B. Driver (Director & Secretary of Respondent)**
Type of Application	:	**Service Charges – Section 27A and 20C Landlord & Tenant Act 1985**
Tribunal Members	:	**Mr L. W. G. Robson LLB (Hons)** **Mr K. M. Cartwright JP FRICS**
Date and venue of Hearing	:	**24th and 25th April 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19th May 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal decided that;

a) The Buildings Insurance excess of £250 which the Applicant had refused to accept directly from Ms Fasal shall be paid by Ms Fasal to the Respondent, and the Respondent shall then credit the Applicant with that amount (the Applicant having already deducted the amount from payments due from him to the Respondent).

b) The sums for cleaning and gardening claimed by the Respondent for the period 1st September 2001 – 31st August 2014 and disputed by the Applicant in this application are payable in full.

(2) All the notices and procedures relating to major works in respect of cyclical repair and redecoration carried out in the period 2012 – 2014 have been carried out in accordance with Section 20 of the Landlord & Tenant Act 1985. Further the work to be done was reasonable and reasonable in amount.

(3) While the Lease dated 8th April 1975 was not particularly clear, the Tribunal was satisfied that the Lease, and consistent custom and practice since then, made the window frames and glass in the property part of the Lessee's demise, and therefore repairable by or at the cost of the Lessee.

(4) As admitted by the Respondent's surveyor at the hearing, the repairs to the shower room window of Flat 5 had not been completed to an adequate standard, due to difficulties with access. If the Applicant made a swift appointment with the Respondent's surveyor, the Respondent undertook to complete the work to a satisfactory standard. The Tribunal determined that that standard be determined by the Respondent's surveyor.

(5) The broken sash cords at the property belong to the Applicant, and therefore are repairable by him (following from the Tribunal's decision at paragraph (3) above).

(6) Relating to the other matters complained of by the Applicant comprising part of the major works, i.e. the number of coats of paint applied to the window frames, the precise manner and areas of redecoration; small areas of repointing missed on the brickwork; repairs to the sash of the rear bedroom windows, repairs to the mortar beads of the windows; and repair of the tiled details above the bay windows; Tribunal decided that the work, although not always perfect, had been done to a satisfactory standard in the light of the fact that the work had been done to a price, and the difficulties encountered with the Applicant when attempting to carry out the work.

(7) Following from the above decisions, the charges or estimated charges made by the Respondent in connection with the major works are reasonable and payable in full, and to be paid within 21 days of the date of this decision.

(8) The Tribunal made NO order under Section 20C of the Landlord and Tenant Act 1985 to limit the Landlord's costs in connection with this application.

(9) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. By an application dated 19th November 2013, the Applicant seeks a determination pursuant to Sections 20, 27A, and 20C of the Landlord and Tenant Act 1985 (the Act), relating to annual service charges demanded for the service charge years commencing on 1st September 2001 to 31st August 2013, and estimated service charges for the period 1st September 2013 – 31st 2014 pursuant to a lease (the Lease) dated 8th April 1975.

2. A case management conference was held on 9th January 2014 at which the Tribunal identified the following issues in dispute;
   a) Service and Administration charges for the years 2002 to 2014 inclusive,
   b) whether in relation to major works of cyclical redecoration and maintenance carried out in the period 2012 – 2014;
   (i) the works were within the landlord's obligations, or payable by the leaseholder,
   (ii) the costs of the works were chargeable to the Leaseholder by virtue of Section 20B of the Act
   (iii) the costs of the works were reasonable, particularly relation to the nature of the works, the contract price, and the supervision and management fee.
   c) whether the Tribunal should make an order under Section 20C limiting the landlord's costs of the application, or an order under Rule 13 for reimbursement of the fees paid by the Applicant to the Tribunal in respect of the application and the hearing.

3. After both parties had made their written statements of case, the Tribunal confirmed with the parties that the dispute over the annual service charges for the period from September 2001 to 31st August 2014 related only to the costs of cleaning the internal common parts and gardening. An additional point related to the recovery by the Applicant of an insurance excess of £250 in relation to a claim made by him on the building insurance for the building. The sum concerned had been offered directly by the leaseholder of Flat 1, Ms Fasal, and refused, but had been deducted by the Applicant from moneys paid to the Respondent in respect of the major works.

4. The Tribunal also identified that the dispute over the major works was confined to a number of specific items which were;
   (i) whether the costs of the works were chargeable to the leaseholder under the terms of the Lease,

(ii) if the statutory requirements of Section 20B (i.e. the notice procedures) had been complied with by the Respondent;
(iii) The charges made by P.D. Styles & Co Ltd
(iv) whether the following specific items had been completed to a reasonable standard; making good broken sash cords, scratched and dirty window panes, repainting of the external windows generally, repair of the shower room window, repair of the rear bedroom window, small areas of repointing under the windows, repair of cement mortar beads adjacent to the window frames, repair of the decorative tile skirt above the bay windows. The Tribunal also ascertained that the amounts specified in the Applicant's summary of case in the "Scott Schedule" for each of the physical items in dispute was not based on particular figures demanded in the service charges, but his own estimates of the likely loss to the Applicant due to alleged breaches of covenant by the Respondent. The Tribunal explained to the parties that it had no jurisdiction under Section 27A to award damages for breaches of covenant. These were matters for the County Court. The Tribunal's jurisdiction was effectively limited to deciding the amount payable (and by whom) when a service charge had been demanded for the item concerned.

5. Extracts of the relevant legislation are contained the Appendix to this decision.

Hearing

6. Despite many disagreements between them over compliance with the Directions dated 9th January 2014, resulting in a number of minor adjustments to the timetable for compliance, both parties had substantially attempted to comply with Directions by the date of the hearing. At the start of the hearing both sides were objecting to late submission of documents. The Applicant had gone as far as making a further written submission outwith the terms of the Directions dated 23rd April 2014 (only seen by the Respondent and the Tribunal on 24th April, the first morning of the hearing). After deciding that none of the documents in fact raised new matters and thus neither party was prejudiced, the Tribunal decided to allow all the documents concerned into evidence.

7. The Applicant had incorrectly (see paragraph 18 of the Directions) assumed that the Tribunal would be inspecting the property as a matter of course after the hearing. However the Tribunal decided that the cost and time of doing so outweighed the benefit, as there were already a number of good photographs in the bundle, and inspection would necessarily be limited to the state of the property on inspection. The Tribunal made a preliminary check of the photographs in the bundle to identify any gaps on the first day of the hearing and invited the parties to take further photographs overnight and submit them in the morning. Both parties did so.

8. For the Applicant, Mrs R. Harrison attended as a friend in support of Mr Ellis. For the Respondent, in addition to Mr Driver, Ms J. Fasal (Flat 1), Mr H. Patel (Flat 3) Mrs Y. Driver (Flats 2 and 4), and Ms L. Wootton (Flat 7) had made witness statements and attended. Mr J. Fletcher (Flat 6) made a witness statement but did not attend. Mr P. D. Styles made a witness statement and attended.

9. A number of events occurred at the hearing. It was clear from the papers that there was considerable personal friction between the parties. At the start of the hearing the Tribunal gave the usual explanation to the parties as to how the hearing would be structured, and instructed them to reserve questions to the end of the other party's evidence or submission. Nevertheless both sides interrupted each other and the Tribunal, or tried to "chip in" on a number of occasions. The Chairman found it necessary to be firm, and eventually had to speak quite sharply to them to maintain good order.

10. Also, on the second morning of the hearing, about an hour after the hearing restarted, the Applicant challenged Mr Cartwright's position on the Tribunal, stating that he was connected with Ms Fasal. He would not give any reason initially. Mr Cartwright and Ms Fasal expressed complete surprise. When Mr Cartwright asked if the challenge related to his position as a Councillor, Mr Ellis indicated that it was, and that the connection related to the London Borough of Barnet. Mr Cartwright stated that he was a Labour councillor in Hammersmith and had no connections with Barnet. Mr Ellis then suggested that Ms Fasal was a Conservative councillor in Barnet. Mr Cartwright stated that he had no knowledge of Ms Fasal before the hearing began. Ms Fasal stated that she was not a councillor and had no political affiliations of any kind. She did not know Mr Cartwright. Ms Fasal also stated that Mr Ellis had suddenly called out to her on the stairs at the property the previous evening, asking if she was Jewish. The Chairman pressed Mr Ellis for any evidence to substantiate his challenge to Mr Cartwright. Mr Ellis stated that the matter had been revealed to him by "a friend on the telephone" the previous evening. He refused to give any further details at all. The Chairman made it clear that he considered the challenge was very late, and the evidence was too vague to consider. It was an improper challenge.

Historical background

11. The background to this application assists in understanding the issues. The facts noted below have been drawn from various witness statements, but are not seriously disputed by any party.

12. The property was redeveloped into flats in the mid 1970s. The Landlord at that time was the developer, Clifford Davis Limited. Ms Fasal was the first leaseholder and moved in about 1975. The Applicant moved in in 1984. The leaseholders set up the Respondent and bought the freehold through the Respondent. Each long lease holds one share in the company, thus the Respondent is owned by the leaseholders collectively. The original Directors were the Applicant, Mr Driver, and a Miss Wilton. Miss Wilton died not long afterwards. The Applicant appeared to be the driving force within the company from 1985 until February 2013, when he resigned. Ms Wootton (Flat 7) also became a Director in 2000. There had been disagreements over the cyclical redecorations of 2004 and 2009. In 2010, the management structure of the company changed due to a desire amongst the other leaseholders for a more open management style and decision making process. Each leaseholder then became a Director. The current holders of every other lease in the building referred in witness statements to personal difficulties in dealing with the Applicant over company and non-company business over an extended period. Their views could be summarised as finding his approach autocratic, and at times, aggressive and abusive. The Applicant denied that he

had ever been abusive, but had in fact done a great deal for the other leaseholders, for which they had been very ungrateful.

Form of Decision

13. The Tribunal asked the parties to make their submissions following the completed "Scott Schedule" required by the Directions. These items mostly follow the matters referred to in the decision summary, with the exception of the issue of the extent of the premises demised to the Applicant, which has been dealt with under the third heading below prior to consideration of the various repair and maintenance items which may be affected by the Tribunal's decision on the extent of the demise. Under each heading the parties' respective submissions are summarised, followed by the Tribunal's reasons and decisions on that point.

Insurance Excess (£250)

14. The Applicant submitted that he had had to make a claim on the building insurance for water damage, which had been paid by the insurance company on 17th June 2013 less the insurance excess of £250. In the past the Respondent had paid the insurance excess and then claimed it through the service charge. If the practice was changed so that lessees suffering damage had to claim themselves from individual lessees, he was concerned that if there was a claim where no individual party was to blame, the lessee would be unable to claim the insurance excess from the lessees collectively. He gave the example of subsidence where the excess was £1,000, but no individual was to blame. It was reasonable for the Respondent to put a reasonable excess through the service charge, and it had done so before.

15. The Respondent did not dispute that the Applicant should not have to bear the excess. The damage was caused by water damage through the negligence of another lessee. The lessee responsible for the damage concerned had consistently offered to settle the excess directly with the Applicant. The Respondent did not agree that it should bear the cost of an excess where the damage was caused by a third party, rather than an uncontrolled event or act of nature AND the party causing damage had agreed to pay the excess. The Applicant had deducted the excess £250 from a payment of service charge due to the Respondent.

16. The Tribunal considered the evidence and submissions. The Tribunal noted that there was a precedent for the procedure argued for by the Applicant, and in fact the Respondent agreed that the Applicant was entitled to reimbursement. The lessee responsible did not dispute that payment was due. The problem was the correct procedure to adopt. The Tribunal noted that all leaseholders paid a fair proportion of the service charge, and the insurance was for their collective benefit. The Tribunal decided that the correct procedure was for the landlord to reimburse the lessee, and to pursue any negligent lessee itself for the money expended. In a case where no individual was to blame, the sum concerned should be added to the service charge for payment by the lessees collectively. In this case the appropriate course is for the Respondent to direct Ms Fasal (who is a shareholder and a Director of the Respondent) to repay the Respondent the sum of £250 owed by the Applicant to the Respondent, explicitly as full and final settlement of her liability to either the Applicant or the Respondent.

Cleaning and Gardening 2001 - 2014

17. The Applicant submitted that Mr Driver had personally taken it upon himself to clean the common parts and tend the gardens since 2001. He was away for at least 4 months of the year when the common parts were not cleaned and the garden not tended. The Applicant had complained about these matters on many occasions. He considered that he should be compensated for the Respondent's breach of covenant and he disputed the service charge for the entire period.

18. The Respondent submitted that Mr Driver had looked after the garden for more than 40 years. It was a relatively low maintenance garden. In mid 2001 Mr Driver had taken over the cleaning of the common parts on a voluntary and intended temporary basis after a general meeting of the company when it had been agreed that the previous cleaner's contract should be terminated. It had proved difficult to find another cleaner, mainly due to issues relating to access, and that different cleaners would be sent. By default the cleaning arrangement had become permanent. The Lease did not specify the number of times the common parts should be cleaned, only in clause 2 that they should be "kept clean and tidy and in good condition". Mr Driver did not charge for any of his work, but only for the cost of materials. When he was in employment between 2001 and 2006 he had never been away from the property for more than 2 weeks at any one time. Since 2006 he had been self-employed and kept a log. This indicated that in the period 2006 to date he had been away for more than 3 weeks on only 8 occasions, and for more than 2 weeks on only 6 further occasions. Since 2012 he had made arrangements for others to do this work while he was away. The Respondent produced witness statements from all the other flats confirming that they were happy with the gardening and cleaning arrangements. Twenty two photos going back to 1977 showed the condition of the garden. The Respondent noted that apart from some photos of the garden taken after it had been treated with selective weed killer in 2013, the Applicant had no evidence of the condition of the gardens or the common parts. Also neither party had photos of the common parts, apart from photos produced by the Respondent showing they were in good condition. The Respondent queried why the Applicant had raised this matter in the application, since until February 2013 he was in a position to take action himself if these matters were so unsatisfactory. Further, in September 2010 the Applicant and Mr Driver had arranged for the carpeting in the common parts to be deep cleaned after the 2009 cyclical redecoration.

19. The Tribunal considered the evidence and submissions. At the hearing the Applicant had confirmed to the Tribunal that he was not querying the disbursements for cleaning and gardening, and he accepted that Mr Driver was doing the work without charge. The Tribunal explained to him that Section 27a primarily dealt with the reasonableness of charges made. A question solely relating to a breach of the Lease was not a matter which could be dealt with under Section 27a. The Tribunal took into account the historic photographs, which showed the garden in generally good condition as late as March 2014. It also noted the photographs of the common parts which showed that at present they were in satisfactory condition. It also took into account the Applicant's previous position as the prime mover in the Respondent until 2013, and if there had been a problem with Mr Driver's work the Applicant was best placed to deal with it. The Tribunal decided that the very modest charges made for disbursements by Mr Driver (less than £170 per flat for a period totalling 12 years) were reasonable.

Although not within its jurisdiction in this application, the Tribunal notes for the benefit of the parties that the evidence of the condition of the garden and common parts presented to it does not suggest that any significant breach of the Respondent's covenants has occurred.

Extent of the demise

20. The Applicant submitted that under the Lease responsibility for the windows rested with the Respondent. He had asked for new windows to be installed as part of the 2013 major works, but the Respondent had repaired the windows instead. The work had not been done well and he should not have to pay any contribution towards the cost. He relied upon an email from Emily Windsor, a barrister, the relevant part of which stated;
"In answer to your questions:
1. It is the landlord who is under an obligation to keep the windows in repair and replace them if rotten. The windows are not expressed to be part of the demised premises (Cl.1). .... The Landlord is liable to keep the structure and external parts of the building in repair and decorated, which almost certainly includes the windows (Cl.4(4)).

Ordinarily these costs would be recoverable through your service charge, but if the state of the windows is attributable to the landlord's failure to comply with his decorative obligations, then strictly speaking, you could refuse to contribute to the cost on the basis that the cost arises as a result of the landlord's breaches of covenant."...

21. The Applicant submitted that other lessees, particularly at Flat 3, had had windows replaced at the cost of the Respondent. The Applicant was being treated unfairly.

22. The Respondent submitted that while it was correct that the definition of the demised premises did not clearly include the windows in Clause 1 of the Lease, the terms of the Lease read together indicated that the windows were included in the lessee's demise. Paragraph 2(d) of the Third Schedule was particularly relevant, which provides for the Lessee to contribute towards:

"(d) The cost of decorating the exterior of the Building (including the external parts of the window frames) and including where undertaken by the Lessor the cost of cleaning windows either of the demised premises or the remainder of the flats in the Building and of the retained parts".

23. The Respondent submitted that Paragraph 2(d) made two separate implications that the windows were part of the lessee's demise; firstly the landlord's decorating liability was limited to the external parts of the window frames, which suggested that the frames themselves were not part of the exterior of the Building; secondly the phrase ".. the cost of cleaning windows of either the demised premises or the remainder of the flats in the Building", implied that almost all the windows in the building were part of a lessee's demised premises, the only exceptions being the glass in the front door and the skylight at the top of the communal staircase.

24. Further the terms of Paragraph 11 of the Fourth Schedule (General Stipulations) made reference to "All the windows of the demised premises shall be cleaned as often as may be necessary".

25. The Respondent noted that all previous practice in the Building had treated the windows as within the lessee's demise, despite the Applicant's suggestions to the contrary. For example, the Applicant himself had sent an email just prior to the 2009 redecoration instructing lessees to ensure their windows were operable and the sash cords were in good condition. Some windows in the property had been replaced even before 1985 (the year the Respondent became landlord). The tenant at Flat 7 had replaced the windows with no charge to the other lessees in the building. Various windows had been replaced in Flats 2 and 4 at the Lessee's expense, the last one being in 2013. Contrary to the Applicant's submission, the windows at Flat 3 had been replaced at the Lessee's cost. Mr Driver recalled that in 1999 the cost of a very small casement window in Flat 1 had been shared with the landlord, but other windows replaced at the same time had been at the lessee's expense.

26. In reply to questions from the Tribunal, Mr Driver confirmed that consent had effectively been given by the Respondent to the replacement windows. No formal documents had been drawn up. Prior to the Applicant's resignation as a Director, such matters had been dealt with informally. He also confirmed that the flats were all similar in that they were 2 bedroom flats. However the window sizes were very different. For example, Flat 1 had two very small windows. Flat 5 had the largest number and size of windows.

27. The Tribunal considered the evidence and submissions. Clause 1 was not very helpful in this matter. The Lease plan appeared definitive. The copy of the Lease plan in the bundle was not properly coloured and of poor quality, but on a close inspection appeared contradictory. The main bay window appeared to be included in the demise, while the bay side windows were split as the line ran between the internal and external walls. The side window to the same room also appeared split. The rear side window appeared to be included in the demise, while the rear windows appeared split. Splitting the ownership of a window frame between landlord and lessee appeared absurd to the Tribunal. However the plan suggested that at least some part of all the windows belonged to the lessee.

28. The Tribunal found Ms Windsor's comments relied upon by the Applicant unconvincing. It was not clear that she had been formally instructed to give a Counsel's Opinion, or that she had been given more than a copy of the Lease. She made no comment at all on the plan, or the other relevant Lease items or practice referred to by the Respondent. She was not available for examination by the Tribunal. The Respondent had also ignored the plan, but had at least considered other parts of the Lease, and explained previous practice with a clear rationale for the practice, i.e. that the windows of each flat varied significantly in number and size.

29. Thus the wording of the demise in the Lease made no specific reference to demise of the windows, but other parts of the Lease suggested that the windows might be included. The plan went further, suggesting that at least two windows were fully included, and the rest were split between the landlord and the lessee. The

Tribunal then looked at the way the parties had interpreted the Lease over an extended period. It seemed clear that with perhaps one minor exception, the accepted interpretation was that the windows (and more particularly the frames) belonged to the lessee. The Tribunal decided that to disturb that interpretation after nearly 40 years would be capricious and unfair to all parties. The Tribunal therefore decided that under the terms of the Lease, as shown by consistent previous practice, the windows and window frames in are demised to the lessee.

Major Works 2013– Section 20

30. The Applicant submitted that the Section 20 procedure was defective at all stages. The notice dated 8th May 2013 from P. D. Styles invited written observations within 30 days to P.D. Styles & Co. Mr Styles, in his last paragraph of that letter stated "Should you have any questions regarding these matters, please contact me at your earliest opportunity." The Applicant by emails and letters dated 13th, 16th, 21st May and 6th June made observations. None of these were acknowledged or replied to by Mr Styles. On 13th June 2013 (after the observations period had expired) Mr Styles wrote stating "As I have been appointed by the freehold company, I am unable to enter into direct correspondence with any individual lessee and correspondence may not be acknowledged. I understand the Directors [of the Respondent] will be responding in the near future and based on my advice...". The Applicant considered that "Mr Styles was thus not acting on behalf of the Respondent but acting for Mr Driver in order to misdirect delay and harass the Applicant."

31. Mr Styles also informed him that specific works would be put out tender. On 9th July 2013 Mr Styles gave a choice of two companies. On 23rd August 2013 Mr Driver for the Respondent confirmed that the Directors had unanimously agreed to appoint VRS Ltd to carry out the works. Mr Ronald Cardy acted as a surveyor supervising the job for P. D. Styles & Co. Later the Applicant discovered from several invoices that Mr Ronald Cardy was a Director of VRS Ltd. The Applicant submitted that thus the contractor was not at arm's length. Further, the Respondent through Mr Driver had harassed him when he was talking to his own chosen nominated contractor on 22nd March 2013, which he considered the Respondent had admitted. The Respondent had also not shown due regard for the Applicant's observations in reply to the notice but had sent a facetious reply on 14th June 2013.

32. The Applicant also went on to criticise the tender document prepared by Mr Styles, particularly Sections 1 and 3 where the costs in his view "remained undefined and unjustifiable and many of the costs included were specious". The Section 20 process and Tender "was false", a comparable estimate taken by the Applicant showed that the proper costs had been inflated by as much as 50%, that the work actually done on the Applicant's property was unprofessional, shoddy and damage was caused "probably deliberately". The Applicant had made several requests to view the works during the contract but these were refused. The Applicant considered that the Second Schedule Paragraph 2 of the Lease gave him the right to enter and inspect the work. Tenders had not been sought from relatively equal companies in overheads and experience but manipulated (he described this at the hearing as "funnelling") to make VRS Ltd the only choice. He summed all this up in his statement of case as "Conspiracy, collusion,

harassment, false costs, Respondent's deliberate breach of covenants". He described the workmanship as "truly substandard to the point of vandalism".

33. The Respondent submitted that it had exceeded the consultation requirements of Section 20. Although it had no obligation to do so, the Respondent had notified the Applicant of Mr Styles' survey on 21st March 2013 to allow the Applicant to make comments. In the event, Mr Styles had not had time to complete the survey and meet the Applicant, but instead the Applicant had telephoned Mr Styles later with comments (evidenced by the Applicant's email of 21st March 2013.) Mr Styles completed his survey on 25th March and provided a draft specification of works for comment on 14th April, which the Respondent copied to all lessees, inviting comments by 24th April. The Applicant had requested more time to consider the draft and in an email on 26th March, confirmed that he had spoken to Mr Styles and that "his requirements were every straightforward". The Respondent noted in passing that the Applicant had said in that email that he had told Mr Styles that Mr Driver probably wished to have 10% of the cost of the works for himself. The Respondent agreed that there had been an incident on 22nd March between the Applicant and Mr and Mrs Driver. Mr Driver had seen the Applicant in the company of another man, whom Mr Driver mistakenly thought was Mr Styles. Mr Driver, having realised his mistake, apologised to the Applicant and his contractor verbally at the time (which had been accepted), and followed this up with a further apology by email.

34. Mr Styles then commenced the Section 20 process by issuing the notice of intention on 2nd May 2013 by email. At the request of the Applicant, who was unable to open the notice, Mr Styles reissued the notice on 8th May 2013. On 13th May 2013 the Applicant sent a letter to Mr Styles which questioned the suitability of the Tender specification and "challenged Mr Styles' professional competence in an abusive manner". On 16th May the Applicant had sent another similarly challenging letter to Mr Styles setting out his own views as to the appropriate form of the contract. The Respondent, concerned that Mr Styles might resign, sent an apology to him on the same day. The Applicant sent a further letter to Mr Styles on 21st May 2013 commenting on the proposed scope of the works, and complained about Mr Styles' failure to reply to the Applicant's earlier letters. Mr Styles advised the Respondent that he did not respond due to the tone and content of the Applicant's previous letters. Nevertheless each point in the Applicant's letter was considered. Mr Styles' advice was not to make any changes to the planned scope of the works on 5th June. A further letter was received from the Applicant on 6th June 2013. On 13th June 2013 the Respondent and Mr Styles reconsidered the observations received, and agreed the text of the letter sent to all the lessees that day, confirming that all observations had been taken into account, and that no contractor had been nominated by any leaseholder. A fuller letter was sent to the Applicant on 14th June replying to each of the Applicant's comments explaining in detail why it would not be changing the scope of the works.

35. Mr Styles then invited tenders from four contractors of whom he had experience. All submitted a tender. All were invited to visit the property in the company of Mr Styles. The tender closed on 5th July. Mr Styles reported to the Respondent on 7th July and the second stage notice under Section 20, the Notice of Contractors, was sent to all lessees on 8th July 2013 by email, inviting comments on the two lowest tenders, enclosing copies of these tenders. There had been some difficulty in

attaching the tenders, but these had been sent to all lessees by 10th July 2013. The Applicant responded on 10th July 2013 with another email to Mr Styles challenging (amongst other things) the Section 20 process, which the Respondent found abusive. The Respondent replied on 15th July 2013 confirming its view that the process was properly conducted. The Applicant replied on 19th July in very abrasive terms. Several exchanges of correspondence of correspondence followed during which neither party changed its view.

36. On 10th August 2013 the second phase of the Section 20 process ended, with no particular comments from any leaseholders on the tenders. The Respondent decided to accept the lowest tender of £32,489 (from VRS) on 23rd August. As the lowest tender had been accepted no further Section 20 consultation was required. The Works contract was signed on 10th September. Works started on 11th September 2013.

37. Dealing with the allegation relating to Mr Cardy, the Respondent agreed that his name had been included as a Director of VRS in the invoices. In fact, Mr Driver had noticed this on the second invoice and had raised the matter with Mr Cardy himself in November 2013. Mr Cardy denied any connection, and had been very concerned. He sought an explanation from Mr Robert Taylor, the Administration Manager of VRS. Mr Taylor replied by email in very apologetic terms. Mr Taylor stated that he considered that it had been an error when he had been editing the company's invoice document to remove his own (i.e. Mr Taylor's) name as a Director, having recently resigned, while also writing to Mr Driver. Mr Taylor thought the error had occurred by transposing some cutting and pasting between the documents. The Respondent went on to submit that a search of the Companies Register showed that Mr Cardy had never been Director of VRS, and Mr Cardy had confirmed that he had never been employed by VRS in any capacity. The Respondent noted in passing that this matter had only been raised by the Applicant on 28th February 2014.

38. The Tribunal considered the evidence and submissions. Unfortunately for the Applicant, the Tribunal concluded that the Respondent's view of the correspondence was substantially correct. It is necessary for the Tribunal to note that a recurring feature in the correspondence in the bundle over many matters is that the Applicant was very quick to assume base motives or misfeasance by others, and to express those concerns in quite objectionable terms. There were examples, even in his statement of case, noted above. Mr Styles would have had good reason to resign as surveyor in the light of some of the comments directed at him by the Applicant. Instead, as he explained in examination, he pursued a sensible professional course by attempting to minimise personal conflict with the Applicant by deciding to correspond through his client. The Tribunal therefore infers no fault to Mr Styles or the Respondent in the progress of his correspondence surrounding the Section 20 process. The Applicant also failed to demonstrate any breach of the strict terms of Section 20 by the Respondent. He particularly alleged that the Respondent's letter of 14th June 2013 was facetious. The Tribunal could find nothing in the letter which could be reasonably objected to, apart from the fact that it did not agree with his views. In his dealings with the Respondent over the Section 20 process the Applicant appeared to be trying to make decisions for the Respondent by instructing potential contractors, imposing his rather uninformed views on the Tender specification, and attempting to give

instructions to the Respondent's professionals which reflected only his own views. However, after resigning as a Director, it was no longer his place to do so. The correspondence revealed no substantive breach of the Section 20 process. On the contrary the correspondence showed that the Respondent had done much more than was necessary.

39. The Tribunal considered very carefully the alleged connection between Mr Cardy and VRS. If accepted, the allegation would have serious consequences. Certainly no less than three documents issued by VRS named him as a Director. The explanation given by VRS was surprising, though not implausible. The Tribunal also noted Mr Cardy's clear denial, and the fact that Mr Driver had made his own enquiries in November 2013, some months before the matter was raised by the Applicant. On balance, the Tribunal decided that it should accept the explanation given by the Respondent, for which some independent support was given by the Companies Register.

40. The Tribunal decided that the incident on 22nd March 2013 was not material to the tender process. The Applicant submitted that the contractor present was a potential nominee who had been put off by the incident. The Tribunal did not doubt that there had been some friction. However the incident occurred more than 6 weeks before the first notice (inviting nominations) went out, and the contractor concerned was apparently the Applicant's own contractor. {The Tribunal was also puzzled as to why the Applicant was conducting him on even an informal inspection before the specification had been drawn up. If the Applicant considered the contractor to be competent, the proper course would have been be to introduce him to Mr Styles who would then offer him a tender pack and inspect the building with him. The Applicant claimed considerable experience of contracting in the glazing sector so he should have been aware of this.

41. The Applicant submitted that the Tender specification was defective and misleading for contractors. At the hearing the Applicant had no satisfactory evidence to support his view, apart from his assertion, and very general evidence that he had some experience of glazing contracts. By contrast Mr Styles was an experienced and well qualified supervising surveyor who in evidence was able to defend his choice. While the Tribunal considered that it might have chosen a different form of tender, the form used by Mr Styles was not unusual and should have posed no problems for a competent contractor. The Tribunal preferred Mr Styles' evidence.

42. Dealing with the remaining points in the Applicant's submission, the Tribunal decided that an estimate obtained nearly a year later from a third party for decoration (Kloss) could not be used to invalidate a detailed Tender following the Section 20 procedure. The allegation of "Funnelling" was too vague to consider. It appeared to be a mere suspicion. Refusing to allow inspection of the works by the Applicant seemed totally irrelevant to Section 20. The Tribunal only has power to rule on items directly relevant to Section 27A in this application. A breach of covenant alone is not within its jurisdiction.

Shower Room Casement Window

43. The Applicant submitted that the work was substandard, and considered it should be renewed. The Respondent had refused to renew it, but had decided instead to

repair it. He criticised the work in great detail. He considered that the centre mullion had lost its alignment as a result of the repair carried out, and that it had been redecorated without following the requirements of the paint manufacturer, particularly relating to surface preparation and the number of coats of paint. The windows had now been screwed permanently shut to limit insurance risks. He considered that the rot he had identified in the frame might spread, with expensive results. The whole job was therefore bodged, unprofessional and unreasonable.

44. The Respondent submitted that the window frame was not part of its repairing obligation. The Applicant had pressed for a new window to be installed. The Respondent, advised by its surveyor, decided that it should repair and redecorate the window sufficiently well to last until the next cyclical redecoration. The Respondent refused to replace the window at the cost of the lessees collectively. While the previous redecoration in 2009 might have been inadequate, this had been overseen by the Applicant. The cause of the decay was lack of ventilation in the shower room. If the inner frame had been properly maintained and decorated the frame would have had less decay. Of all windows in the building this was the only window with significant decay. However the decay was confined to a section of the sill, and had been removed. Wood hardener and resin filler had been used before decoration. They had been applied correctly. The Applicant had agreed to this work, although he continued to claim that the window was beyond repair. It was not correct that the mullion had been distorted during the works. It had also been agreed with the Applicant that one side hung casement should be left operational, and the other sections screwed shut. The Applicant had not operated the moving frames regularly, or at all, after redecoration to prevent the surfaces sticking together. The repair done had strengthened the frame from its previous condition. This window could only be opened by leverage between the casement and frame. Even a window in perfect condition would be as vulnerable.

45. Referring to redecoration, the lessees were expected to offer the windows in reasonable and working condition. Minor surface repairs were only carried out to retain the serviceability of the windows until the next scheduled redecoration. Apart from some sash windows elsewhere the building which were easily freed, all windows had met these requirements, except those of the Applicant.

46. Having considered the evidence and submissions, the Tribunal noted Mr Styles' comments, and his offer to require the contractors to return to this window and complete any outstanding work. As decided above, the window frames and sashes belonged to the lessee, and were repairable at his expense. The photographs produced of the window's current state in fact suggested that the window was in fair condition, given the limited period the repairs were expected to last. The Tribunal noted the fact that the contractor had left that part of the job due to the Applicant's extremely strong comments to his men. While the Applicant considered his comments appropriate, threatening to call the police was a serious matter, and the contractor was wise to withdraw. The Tribunal passes no comment on the reasons for the Applicant's action. He had asked the contractor to stop in very clear terms, and the contractor had complied. His staff were then unwilling to return. The Tribunal decided that it was appropriate to follow Mr Styles' suggestion and order that the Respondent's surveyor should inspect the

window and that any work found necessary by the surveyor should be done to the surveyor's satisfaction.

Broken sash cords

47. The Applicant submitted that four sash cords had been broken by the Respondent' contractors during the works. Three had been cut away and removed. One had been left broken and hanging. On complaining to the surveyor he had been informed that the sash cords were his responsibility. The Applicant considered the damage to be pure vandalism, for which compensation should be paid.

48. The Respondent submitted that the operation and maintenance of the windows was the lessee's responsibility. The Applicant himself had instructed other lessees to ensure their sash cords were in good condition prior to the redecoration in 2009. To carry out the external redecoration it was necessary to open the windows to the point where the frame became internal surfaces. Most of the front bay windows of Flat 5 were stuck prior to redecoration and had to be levered open. It was noted at that time that all the sash cords were old (possibly predating the conversion in 1975). One was so rotten that it snapped during the opening operation. After redecoration other sashes became stuck, probably due to the failure of the Applicant to move them frequently during the drying process. When the contractor attempted to free them, several more broke, despite taking particular care. The broken cords were not cut. They had been pulled back into the box by their weights. The Respondent submitted that the problem was solely due to the Applicant's neglect.

49. The Tribunal considered the evidence and submissions. The Tribunal preferred the evidence of the Respondent. There was evidence that the cords were old, possibly very old. Other lessees had renewed cords at their own expense for this reason. There was no other evidence of deliberate damage to the cords, apart from the Applicant's assertion.

Scratched and dirty Bedroom windows

50. The Applicant submitted that after the works his windows were left unwashed, and with paint runs and smears. And flecked with cement sludge and paint. One glass panel was scratched. This failure was unprofessional and unreasonable. He submitted photographs showing the state of the windows.

51. The Respondent submitted that all windows and external doors had been washed down on two occasions. Mortar splashes had fallen on the Applicant's windows as a result of work being done above. The splashes had been removed and the windows cleaned. There was no evidence of any significant scratching caused by the works. The glass appeared to be over 50 years old and had been redecorated previously. There was no evidence of splashes or runs. Prior to work commencing it had been noted that there were many splashes and runs on the brickwork from previous redecoration. The Respondent had agreed that the previous marks on the brickwork should not be removed. Recent viewing from the garden suggested that there was some dirt on the lower panes of one of the rear windows. It was difficult from that inspection to decide to what extent this was due to the 2013

works. In any event, Clause 2(17) of the Lease showed that window cleaning was the lessee's obligation.

52. The Tribunal considered these submissions and evidence. The photograph taken with scaffolding in place showed that the lower panes of one window were badly splashed. However two later photographs showed that the windows were progressively cleaner. Nevertheless, the most recent photograph taken by the Respondent on 24th April 2014 suggested that these panes were still not totally clean. However it was impossible to decide whether the remaining splashes were old, or from the recent work. There were no obvious scratches on the glass. The Tribunal decided that the appropriate order to make was to add this item to the list for consideration by the Respondent' surveyor when deciding what further work should be done prior to the end of the defects period.

Inadequate repainting (Generally)

53. The Applicant submitted that the contractors had not applied the paint according to the manufacturer's recommendations. One undercoat had been omitted. After the matter had been raised with Mr Cardy, the sill of the bay windows had been repainted correctly, but the window frames had already been painted. This was bad workmanship and poor supervision.

54. The Respondent submitted that the paint had been applied in accordance with the manufacturer's recommendations, after the surfaces had been prepared and filled. Mr Cardy and Mr Styles had inspected, and Mr Styles had made a highly detailed snagging list shortly before completion of the works.

55. The Tribunal considered the evidence and submissions. It had closely examined the photographs and specifically questioned Mr Styles on this point while he gave evidence. The Tribunal concluded that while there were, almost inevitably, small blemishes in the paintwork, it accepted that the paint had been applied reasonably well, and in accordance with the manufacturer's recommendations. Even after a very wet winter, the paintwork appeared in good condition, with no signs of peeling. The Tribunal decided that the Applicant's concerns were rather overstated.

Cement Mortar beads poorly repaired
Front Bay Tile Skirt not repaired
Rear Bedroom Sash Windows badly repaired
Repointing inadequate

56. The Tribunal decided to deal with the above items as one item.

57. The Applicant submitted that the mortar beads had not been repaired to a satisfactory standard. He drew attention to small cracks, some small pieces missing, to his opinion that the contractors had attempted to replace the beads with mastic unsuccessfully, to paint being spread across the cement beads sealing the gaps with paint, so that the frames were now unventilated, and likely to rot. The matter was brought to Mr Cardy's attention. This was deliberate damage to his property and unprofessional. Broken and missing tiles in the decorative front tile bay skirt had not been repaired at all, and the Respondent refused to do so. The bottom rail of the rear bedroom sash window had warped through years of

neglect. The tenon joint was loose. To repair the rail, the contractors had inserted screws underneath the rail to tighten it up, but had countersunk the screws so far that they had weakened the tenon joints. The window was thus damaged. He considered it should be replaced. The repointing around the building generally he considered was simply awful, particularly around his bay windows. It had only been done for show.

58. The Respondent submitted that the cement mortar beads had been repaired to match the original. Mr Styles in 40 years of experience had not come across the type of rot foreseen by the Applicant. Sufficient ventilation came from the design of vertical sash windows. The sash windows were operational prior to redecoration, but had not been properly maintained by the Applicant leading to decayed timber in the bottom sashes. The Respondent only did work to prepare the windows for redecoration in reasonable condition. The repair done was the only minor repair possible, and had strengthened the windows when compared with their previous condition. The Applicant had not provided access for inspection of the repair to assess whether any further minor repairs would be appropriate. The front bay tile skirt was too expensive to repair, but had been made watertight. Patch repointing had been done to specific walls where the pointing was substandard. In some areas around the mortar joints in Flat 6 had become eroded and loose. The areas concerned were raked to a depth of 20mm and a sand/cement mortar was used to "flush" point the joists to match the existing style.

59. The Tribunal considered the evidence and submissions. Relating to the mortar beads, the Tribunal preferred Mr Styles' evidence. The Applicant could not point to any support for his view, even in the frame in question. He claimed considerable knowledge and experience, but without evidence. His proposition appeared novel to both Mr Styles, and the Tribunal's professional member. The frame appeared from the photographs to now be in reasonable condition, rather better condition than previously. The Tribunal accepted that the cost of repairing the tile skirt was likely to be very high, and that it was only a decorative detail. It was reasonable for the Respondent to decide not to do this work. There was evidence of repointing work, and although some small areas had been missed, or deemed too unimportant to deal with, the cost of doing a great deal of fine work would again be very high. It was not in the contract specification. The Tribunal decided relating to all these items that the work had been done in accordance with the specification to a reasonable (although not perfect) standard, which should be sufficient until the next cyclical redecoration and repair in just over four years' time.

Surveyor's fees

60. At some points in the statements of case, and at the hearing it appeared that the Applicant, was challenging the fees of P. D. Styles & Co, or at least there was some doubt as to the amount of the fees being charged. The Applicant stated correctly in item 4b) of his statement of case that the fee (although it is not a commission as stated by the Applicant) was 12% of the cost of the work plus VAT. He later suggested that the work done for that fee was inadequate and unprofessional in a number of respects, as noted in the submissions above

61. At the hearing the Respondent submitted that the fees were reasonable, and reasonable in amount.

62. The Tribunal, drawing upon its own knowledge and experience, considered that the fee charged was at a reasonable level for this type of work, given the relatively modest value of the contract. It also considered that nothing in the papers or at the hearing in fact suggested that the work done by P. D. Styles & Co was inadequate. The Tribunal decided that the Surveyor's fee of 12% plus VAT was reasonable and reasonable in amount.

Costs - Section 20C and Rule 13

63. The Applicant submitted that he had brought the application after years of victimisation and coercive treatment. Inclusion of the Respondent's costs of the application in the service charge would be unfair and oppressive. At the hearing he made an application under Rule 13 for reimbursement of his fees paid to the Tribunal. He submitted that he had been forced to make the application. The Respondent had failed to look after his windows and had had to make all the running. He considered that the other lessees were ungrateful for the years of work he had done for the Respondent.

64. The Respondent submitted that the Directors of the Respondent and other leaseholders had suffered harassment and abuse from the Applicant over many years. The Respondent had done all it could to react accurately professionally and politely to the Applicant. The Respondent had taken all possible steps to ensure that proper process and execution was followed in connection with the major works. It had appointed a chartered surveyor to advise specify and oversee the works. The Respondent had had no choice but to reply to the application. It had taken all possible steps to keep its expenses to a minimum. The Directors had been obliged to spend a great deal of time (260 hours in the case of the Company Secretary) defending the application. Although the Applicant asked for discovery of invoices from 1st September 2001 and the provision of accounts, he had not questioned a single invoice from 1st September 2001 to 31st August 2013. The Respondent opposed both the Section 20C and Rule 13 applications.

65. The Tribunal's powers under both Section 20C and Rule 13 are discretionary. The Applicant had failed on nearly all substantive issues. That is not conclusive consideration, but relating to the two issues where he had had some success, the insurance excess payment was a technical issue, and payment of the sum concerned was never in doubt. Relating to the shower room window, the Respondent had volunteered a concession during the hearing, i.e. to return, inspect the window, and do any works found reasonably necessary. The Tribunal considered that if the Applicant had acted more reasonably when the work was being done, it would have been completed to a satisfactory standard at the time.

66. The Tribunal also found that the Applicant had consistently overstated his case, and put the Respondent's officers (who are volunteers) to much trouble and expense in defending the application. Despite his protestations to the contrary the Tribunal also found that the documents in the bundle consistently showed the Applicant to be overbearing and abusive in correspondence with his co-lessees and the Respondent's advisers. The only positive points to come out of his application were that a) the obscure ownership of and responsibility for repair

and maintenance of the windows has been settled, which should save much disagreement in the future, and b) that the Respondent Company was now run in a more professional way for the benefit of all lessees.

67. The Tribunal thus decided to make NO order under Section 20C or under Rule 13.

Signed: Lancelot Robson
Mr L. W. G. Robson LLB (Hons)
Tribunal Judge

Dated: 19th May 2014

Appendix

Landlord & Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant

costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

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

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

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

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

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

Rules 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-

(a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

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

(3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...
