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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/18UK/LIS/2015/0041 CHI/18UK/LDC/2015/0041
Property	:	Apartment 10, York Place, Northam Road, Bideford, Devon EX39 3LA
Applicant	:	Miss Eileen Robertson
Representative	:	Mr Robert Sheridan counsel instructed by Bazeley Barnes and Bazeley solicitors
Respondent	:	HandF Finance Limited (Mr Kenneth J Court)
Representative	:	Miss Emma Smith counsel instructed by HCLS LLP Solicitors
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge section 27 A of the Landlord and Tenant Act 1985 ("1985 Act")
Cross Application by Respondent	:	Dispensation of consultation requirements section 20ZA(1) of 1985 Act
Tribunal Member(s)	:	Judge Tildesley OBE Judge IM Arrow Mr T E Dickinson FRICS
Date and Venue of Hearing	:	Imperial Hotel Barnstaple 25 April 2016
Date of Decision	:	26 May 2016

DECISION

Decisions of the Tribunal

1. The Applicant had suffered relevant prejudice from the Respondent's failure to consult. The Applicant was denied the opportunity to request completion of the works in a more timely fashion even if they had cost slightly more. The strength of the prejudice was tangible because of the undue length of time taken by the Respondent to repair the roofs without adequate explanation which exposed the Applicant to unnecessary risks to her health from the damp present in her property whilst the roofs stayed in a state of disrepair.

2. It is reasonable for an order to be made granting the Respondent dispensation from the consultation requirements but with conditions that apply solely to the Applicant.

3. The conditions are that the Applicant's contribution to the costs for each of the roof works to is restricted £250 making a total of £500. The Respondent shall pay £3,418 plus VAT towards the Applicant's legal costs, and to reimburse the Applicant with the hearing fee of £95.

4. An order under Section 20C of the 1985 Act, preventing the Respondent from recovering its costs incurred in connection with the Tribunal proceedings through the service charge.

Background

5. York Place was constructed in the late 19th century and located close to the centre of Bideford. York Place was formerly part of the Stella Maris school. York Place was a grade 11 listed building and was converted into 13 self contained apartments around 1998. The number of apartments was increased to 14 in 1999 by subdividing apartment 4 into two apartments.

6. Apartment 10 consisted of a bedroom, living room, kitchen/breakfast room and bathroom all located on the first floor. Access to the apartment was gained through a door on the ground floor which opened into a long hall with stairs to the first floor. The windows of the lounge and the bedroom overlooked the garden and the car park for York Place, which was protected by a secure gate from the public highway.

7. Apartment 10 formed part of the infill between original buildings of the former school, which resulted in the apartment having a pitched tile roof over the bedroom and a flat roof over the other three rooms.

8. The Applicant purchased apartment 10 in July 2010. Mr Court who was a full-time director of the Respondent said the Respondent acquired the freehold to York Place by default. Mr Court stated that the Respondent and him were not professional landlords. The Respondent

was a family business providing short-term finance to property developers.

9. In 1999 Mr Coughlan through his company Leisureminute Limited purchased York Place with the assistance of a loan from the Respondent which was secured by a charge on the freehold. Mr Court encouraged Mr Coughlan to develop the York Place and sell off the apartments. In this regard Mrs Court purchased apartment 1 to provide Mr Coughlan with additional funds.

10. According to Mr Court, around 2002 Mr Coughlan lost interest and abandoned the role of managing the property. As a result the condition of the building deteriorated and some lessees engaged in anti-social behaviour. Mr Court decided to confront Mr Coughlan which ended with Leisureminute surrendering the freehold to the Respondent and Mr Court taking over responsibility for managing York Place. Mr Coughlan's co-operation was secured by the payment of £5,000.

The Dispute

11. The dispute concerned problems of water ingress and damp in apartment 10 and the actions taken by the Respondent to remedy the faults in the roofs which were responsible for the problems.

12. The Applicant argued she had suffered significant prejudice from the inordinate length of time taken by the Respondent to effect the roof repairs and from the Respondent's non-compliance with the statutory requirements for consultation.

13. The Respondent initially argued that it had consulted with the Applicant but this assertion was withdrawn by counsel at the hearing. Instead counsel submitted that the Applicant had not been prejudiced by the failure to consult and that it was reasonable to grant the Respondent dispensation from the consultation requirements.

The Applications

14. The Applicant made an application under section 27 A of the 1985 Act to determine the reasonableness of the charges for the repairs to the flat roof and the pitched roof. Essentially the Applicant argued that the charges should be limited to £250 for each repair, which was the costs threshold imposed by the legislation for non-compliance with the consultation requirements.

15. The Respondent had submitted a counter application under section 20ZA of the 1985 Act, requesting the Tribunal to grant the Respondent dispensation from the consultation requirements. This application was served on all the leaseholders at York Place. The Tribunal directed each leaseholder to make known their views to the Respondent and the Tribunal about the dispensation application.

16. The Applicant had also applied for an order under section 20C of the 1985 Act to prevent the Respondent from recovering its costs in connection with the applications through the service charge. The parties also at the hearing invited the Tribunal to make costs orders against the other party.

17. The Tribunal had originally decided that the applications would be determined on the papers. Following receipt of the hearing bundles, the Tribunal changed its mind and ordered an oral hearing because of the wide gulf between the parties on the facts. In the Tribunal's view, the wide gulf could only be resolved by evaluating the parties' evidence in person after cross examination.

18. The hearing date was fixed for the 22 February 2016, and then adjourned because Mr Court was not fit to travel. The Tribunal gave the parties an opportunity to produce a statement of agreed facts for the purpose of assessing whether the dispute could be settled by submissions or by a telephone conference hearing. The parties did not agree such a statement and the applications were heard on 25 April 2016 at the Imperial Hotel, Barnstaple.

19. At the hearing Mr Robert Sheridan of counsel represented the Applicant who also attended in person and gave evidence. Miss Emma Smith of counsel represented the Respondent with Mr Court giving evidence.

20. The Tribunal admitted in evidence the hearing bundles which contained the witness statements of the Applicant and Mr Court. Their statements were tendered for cross-examination by the other party.

21. References to the documents in the decision are set out in [ ] with A being the Applicant's bundle and R the Respondent's bundle.

Inspection and Lease

22. The Tribunal inspected York Place and the interior of apartment 10 prior to the hearing in the presence of the parties. The Tribunal saw no signs of damp and of the damage caused by the water ingress in the apartment. The Applicant informed the Tribunal that the affected areas in the lounge had been re-decorated following the repairs to the flat roof. The meter readings taken by the Tribunal revealed no particular problems with damp on the inside of the apartment. The Tribunal was able to view the pitched roof from the ground level, and observed new slates on the roof.

23. The lease for apartment 10 was dated 22 June 2001, and made between Leisureminute Limited as the Landlord, York House (Bideford) Management Company Limited as the Management Company and Barry Simon Ormrod, and Charlotte Lorraine Hansen as the Tenant. The term of the lease was for 125 years from 24 June 2000 with a rent

of £50 per annum for the first 25 years rising through a sequence of rent increases to £150 per annum for the last 25 years.

24. Under the lease the Landlord was required to provide estate services as set out the Sixth schedule in the event of the Management Company ceasing to exist. The Tribunal understands that the Management Company was struck off for the non-filing of accounts prior to the Respondent acquiring the freehold.

25. Paragraph 1 to the Sixth schedule required the landlord amongst other matters to renew, repair and remedy all defects to the main structure of York Place including the roofs and foundations. The Tenant was liable to contribute towards the costs of those services by way of a variable service charge. In the case of apartment 10 the Tenant's share of the cost of providing the services was 5.41 per cent.

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

The Facts

27. The Tribunal starts with the facts not in dispute.

28. In December 2012 apartment 10 suffered water ingress arising from defects in the roofs causing damage to the interior of the apartment.

29. The Applicant in her witness statement gave a description of the damage caused by the water ingress [A B1 and B2]. She also provided photographs of the damage which were taken at the time the damage was done [A B14-B18]. The Respondent did not challenge the Applicant's description of the damage:

> "Water unexpectedly poured down my kitchen wall being the exterior of the flat, but on the inside. It looked like a waterfall and blew my fuses and left me in the dark....The corners of my lounge and external wall were affected also because of the weather. My bedroom wall became exceedingly wet from the ceiling. The water ingress in my bedroom got wider on both sides until it was at least two feet up the wall from the skirting boards and looked like rising damp. Mould soon began to take hold, so I now had wet and mouldy outside walls on all sides caused by the two roofs".

30. The Applicant accepted that the Respondent had engaged contractors who had carried out and completed the necessary works to the roofs in two phases. The Applicant also accepted that the works were completed to a good standard and the costs of those works exclusive of scaffolding were reasonable.

31. The works on the flat roof were carried out by a Mr D Ackland and completed towards the end of May 2013[1], some six months after the incident of water ingress in December 2012. The costs of those works were £10,300 which included the costs of repair to the flat roof areas above apartments 1 and 2.

32. The works on the pitched roof were carried out by a Mr Cox. The works started on 4 July 2014 and completed by 1 August 2014, some 20 months after the incident of water ingress in December 2012. The costs of those works were £11,700.

33. The scaffolding for the pitched roof repairs had been erected by 15 May 2014. The cost of which was £2,340.

34. The Respondent paid for those works from the sinking fund. The Respondent did not request an additional contribution towards the service charges from the leaseholders.

35. The Respondent arranged for the re-decoration of parts of apartment 10 affected by water damage at a cost of £1,700. The redecoration was carried out in August 2013. The Respondent recovered the costs through the service charge.

36. The Respondent accepted that the costs for the two sets of works to the roofs met the financial threshold[2] to trigger the requirement to consult the leaseholders over those works in accordance with the provisions of the Service Charges (Consultation Requirements) (England) 2003 ("2003 Regulations"). Thus the works to the roofs were qualifying works within the meaning of section 20 of the 1985 Act and the 2003 Regulations

37. The Respondent did not consult the Applicant and the other leaseholders in connection with the repairs to the flat roof.

38. The Respondent issued the leaseholders with one written circular regarding the proposed works to the pitched roof. This was dated 24 January 2014 [A B27]. Mr Court informed the lessees that it was now necessary to replace the smaller of the slate roofs forthwith. Mr Court advised in the letter that a detailed examination had taken place and that various quotations had been obtained. Mr Court said that the cost would come to approximately £13,500. Mr Court stated that he would endeavour to find the costs from existing budget. Finally Mr Court said that work would commence shortly with the pre-requisite of scaffolding. A quotation in the sum of £11,700 from the contractor (Mr

[1] At para. 4 of the proposed agreed facts the parties agreed that the works to the flat roof took place between early summer 2013 and finished in July or August 2013. The parties took a different view at the hearing. The Applicant thought it was the end of May which corresponded with the last payment made to Mr Ackland.

[2] The consultation requirements apply where the costs result in the relevant contribution of any tenant being more than £250.

Cox) who did the eventual works to the pitched roof accompanied the circular.

39. The Applicant highlighted the following aspects of non-compliance with the 2003 Regulations by the Respondent [A B51). The Respondent did not challenge the Applicant's statement:

- No consultation option. The Regulations explicitly require consultation and a period of time for that consultation.
- No possibility of the tenants putting forward their own contractor or to make observations on the proposed works.
- No statement setting out at least two estimates for the works, together with any observations from the tenants.
- No notice given to the tenants of the reasons for awarding the contract.

40. The January 2014 Circular for the second set of works did not comply with the requirements of the 2013 Regulations.

41. The Tribunal turns now to the facts in dispute.

42. The Applicant asserted that the defects in the pitched roof as well as in the flat roof were known to the Respondent in December 2012 when her apartment suffered the water damage. Given these circumstances the Applicant did not understand why the Respondent had not repaired both roofs at the same time. The Applicant also considered the 20 month wait for the new pitched roof unacceptable.

43. Mr Court disagreed with the Applicant. He said that the problems with the pitched roof became manifest only at the end of 2013 following the occurrence of exceptional weather conditions. According to Mr Court, the delay thereafter in the commencement of the works to the pitched roof was due to the exceptional weather conditions. Mr Court stated that Miss Robertson's unwillingness to co-operate with the contractor, and his discussions with the Conservation Officer contributed only marginally to the delay.

44. The Applicant's bundle included a letter from Imperial Consultants dated 13 May 2013 [A B21] which had been instructed by AXA insurance to form a view on whether the damage caused to the Applicant's apartment was covered by the building insurance for York Place. According to the Applicant, Mr Court had advised her to contact the insurers. The letter set out the surveyor's findings following his visit to the apartment on 9 May 2013.

45. The letter identified that the surveyor had observed staining to the decoration and ceiling in the rooms of apartment 10 together with the formation of mildew.

46. The surveyor had noted on his external inspection that the flat roof had been replaced, whilst the slate roof showed signs of previous repairs, and clear signs of erosion to the slates. The surveyor saw no evidence of any storm damage to apartment 10.

47. The surveyor concluded that the root cause of the water damage to the apartment was age related decay to the roof which had caused general rainfall to ingress the property over a long period of time. The case handler for Imperial Consultants stated the damage caused to the apartment would not be covered by the building insurance because of the surveyor's conclusion about age related decay.

48. The Applicant included a letter from Mr Lester Bird MRICS of Underwood Wright, Chartered Surveyors, dated 15 May 2014 [A B37] on his inspection of apartment 10 in connection with alleged damp in the property[3].

49. Mr Bird carried out a limited inspection of the "*old slate covered hipped and pitched roof*" from the access hatch in the bedroom ceiling using torchlight. Mr Bird reported on the state of roof as follows:

> "It was apparent that the roof covering had no under-sarking felt and due to some slipped/misplaced slates daylight was evident. It was also possible to see that due to their age that the slates had, in the most, delaminated and were in need of urgent replacement"

50. The Tribunal on balance prefers the Applicant's evidence that defects in the pitched roof contributed to the water ingress to apartment 10 in December 2012, and as a result the Respondent took nearly 20 months to remedy the problem. The Tribunal in coming to this conclusion placed weight on the report from Imperial Consultants which identified longstanding defects with the pitched roof in May 2013. The Tribunal is also satisfied that Mr Bird's opinion of 15 May 2014 corroborated the fact that the pitched roof had been defective for a long time.

51. Counsel for the Respondents pointed out that the Applicant had not put anything in writing about the water leaks and damp in her flat until her solicitors wrote to Mr Court on 5 March 2014. Counsel questioned why the Applicant had not done this, particularly as she had sent a letter on 23 September 2012 to Mr Court complaining about parking and the magnolia tree, which was just before the events in December 2012.

52. The Applicant explained that she had responded promptly following the occurrence of water leaks in her property. In this respect she

[3] The investigation of the alleged damp was restricted to the lounge and the bathroom (not the bedroom). See the letter from Drysafe dated 12 May 2014 [A B39].

produced a copy of a Checklist signed by a British Gas Engineer dated 14 December 2012 which reported:

> "water coming through the ceiling in the kitchen; flat roof above (horrid rain for 24 hours); requires builder".

53. The Applicant said instead of writing to Mr Court she spoke to him and followed his advice by contacting the insurers. According to the Applicant, Mr Court only took action after the insurers refused to pay for the repairs, which was restricted to the flat roof. The Applicant said that Mr Ackland, the contractor for the flat roof, had told her that everything was in hand in relation to the pitched roof , and that he had told Mr Court about the problems with that roof.

54. Mr Court accepted that he had spoken with Mr Ackland about the pitched roof but his recollection was that Mr Ackland had told him that the tiles could be a problem in the future and required monitoring.

55. The Applicant said that her patience eventually ran out in respect of the repairs to the pitched roof. In January 2014 she instructed solicitors to pursue the matter with Mr Court. Her solicitors wrote to him on 5 March 2014 specifically mentioning the ongoing problems with damp in the bedroom which had not been resolved despite the lapse of 15 months from when the damp first appeared.

56. Mr Court's response of 12 March 2014 to the solicitors was that the Applicant's timescale of events was broadly correct but he thought the substantial work done to the flat roof had cured the water ingress until the exceptional weather conditions later on in the year which created further problems. According to Mr Court, it was at this point that he concluded the working life of the pitched roof had come to an end.

57. The Respondent's bundle included copies of reports from Mr Court to all leaseholders at York Place. In the report headed August 2011 [R 66] Mr Court said:

> "I have made the usual transfers to the Sinking fund and will stress again that this fund has to be ring fenced solely for the future repair and possible replacement of the roof".

58. Mr Court also said that he had provided the photographs of the roofs to the surveyor for the insurers[4] who inspected the property in May 2013. The photographs revealed that the flat and pitched roofs were in a questionable state of repair and formed the basis upon which the insurers refused the claim.

59. The Tribunal is satisfied that the Applicant informed Mr Court around December 2012 about the damp and water ingress problems in her apartment.

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[4] See paragraph 2 of his response to the Applicant's witness statement [c11].

60. The Tribunal considers there is clear evidence that Mr Court knew of the ongoing deterioration in the pitched roof at the time of the water ingress in December 2012. The evidence included the photographs of the defects in the pitched roof provided by Mr Court to the insurer's surveyor in May 2013. Also Mr Court made specific reference to the repair and replacement of the roof in the August 2011 report to all leaseholders. The Tribunal finds that Mr Court was aware that the defects in the flat roof and in the pitched roof had contributed in December 2012 to the water ingress and damp in the Applicant's apartment

61. The Tribunal's findings at paragraphs 50 and 60 undermine Mr Court's assertion that the problems with the pitched roof only manifested themselves towards the end of 2013. This begs the question why he took so long to deal with the matter.

62. In the Tribunal's view, the evidence indicated that Mr Court decided to phase the works in the hope that the repairs to the flat roof would resolve the Applicant's issues. This position became untenable with Mr Court choosing to carry out the works to the pitched roof at the beginning of 2014. Mr Court then blamed the exceptional weather conditions for the delay after January 2014. Contrary to what was alleged in the hearing Mr Court did not attach significant culpability to the Applicant for the delay. In his witness statement at paragraph 10 [R17] Mr Court acknowledged that the Applicant only contributed marginally to the delay.

63. The Tribunal, however, considers Mr Court's reason of exceptional weather conditions an over simplification. In the Tribunal's view, the contractor's limited availability to do the work was in all probability the decisive factor for determining when the work was done.

64. At [A B35] Mr Cox, the contractor, said in a fax to Mr Court dated 1 April 2014 the following:

> "I explained to Miss Robertson (*the Applicant*) that due to the amount of storm damage work that I have undertaken my original work schedule has been delayed. I have been working seven days a week to catch up, and now hope to start the roof at York Place in week commencing 5 May. This is dependent upon the scaffold company- I am awaiting confirmation that they can erect the scaffold by this date".

65. The Tribunal also considers the period of six months to replace the flat roof unduly lengthy for which Mr Court offered no explanation. The Tribunal agrees with the Applicant's assessment that Mr Court put the onus on her to find a solution. Mr Court only took action once the insurance company refused to foot the bill for the repairs.

66. Applicant's counsel described Mr Court's conduct as egregious when it came to consulting with the Applicant about the works to the roofs.

According to counsel, Mr Court only did with the property what he wanted and when he wanted, and he rode roughshod over the Applicant's rights as leaseholder. In this respect Counsel pointed out that Mr Court had completely disregarded the legal requirements on consultation which should be viewed as a very serious failure on his part.

67. Respondent's counsel held a different view of Mr Court's behaviour. Mr Court was a reluctant landlord. He only became involved in the property to arrest its decline arising from anti-social behaviour of some leaseholders and a failure by the previous managing agents to keep the property in good condition.

68. Mr Court's wife had purchased Apartment 1 to provide funds to the previous owner of York Place to complete the improvements required to the property. After the Respondent acquired the freehold in 2002, Mr Court felt a sense of responsibility to the leaseholders at York Place. He instituted a vigorous programme of management which involved taking forfeiture proceedings against the leaseholders responsible for the anti-social behaviour and engaging the services of a cleaner, a gardener, and a water and pump engineer. Mr Court also made contact with a number of recommended trades-people to carry out regular maintenance on the property.

69. Mr Court said the accountancy records for York Place were set up in the Respondent's books. In August of each year Mr Court prepared an annual report for all leaseholders reporting on the service charge budget and the various matters affecting the property during the previous year. Mr Court would normally attach to the report invoices for fire insurance, service charge and ground rent, apportionment summary, statement of account including sinking fund, the budget for the forthcoming year, and fire insurance schedule.

70. Mr Court stated that the changes he brought to the management of the property produced real and sustainable improvements to the social cohesion of the leaseholders living there, and to the fabric and maintenance of the property. Mr Court emphasised that he was always mindful of the leaseholders' financial circumstances and had sought to keep the service charge as low as possible. Mr Court pointed out that he charged a modest management fee, which was £500 per annum (£31.71 per apartment) until last year when it was increased to £750.

71. Mr Court said since taking over the management of the property he never had any complaints from any leaseholder except the Applicant. According to Mr Court, most leaseholders had been gracious enough to express their gratitude and were unfailingly helpful and courteous in the recognition of the difficult job facing him in connection with the management of the property.

72. Mr Court said he always welcomed views on the running of the building from the leaseholders. Mr Court referred to the last sentence of the August 2011 report to lessees where he said:

> "Again I would express the hope that if anybody wishes to make a pro-active contribution or has any worthwhile and meaningful suggestions that they should not hesitate to contact me".

73. Mr Court said in cross examination on why he did not consult on the works :

> "I put my hand up. I am not a professional landlord. I was not aware of the correct procedure".

74. In September 2015 Mr Court gave up the management of York Place, and handed it over to HNF Property, which according to Mr Court was a long established firm of surveyors and managing agents. Mr Court stated HNF Property had no connection whatsoever with the Respondent despite their similarities in their names.

75. The criterion for granting dispensation from consultation requirements is whether it is reasonable to do so. The Tribunal is required to view reasonableness from the standpoint of the mischief to which the statutory consultation procedures are directed. The Tribunal is not considering whether the Respondent's conduct overall as a landlord, as executed by Mr Court, was reasonable. In this context the Tribunal's focus is narrow, concentrating on Mr Court's reasons for his non-compliance with the statutory requirements in connection with the works to the roofs.

76. The Tribunal acknowledges Mr Court's genuine commitment to York Place which has reaped positive benefits for the lessees. The Tribunal accepts that Mr Court on the Respondent's behalf has exercised his management responsibilities conscientiously and with the best of intentions but that is not the issue in this application. Although the Tribunal considers harsh the description of Mr Court's conduct as egregious, the Tribunal is satisfied that he rode roughshod over the Applicant's rights to be consulted on the nature of the works which was due to his ignorance of his legal responsibilities as a landlord.

77. The Applicant maintained that she had been severely prejudiced by the Respondent's failure to consult with her on the proposed works to the roofs. The Respondent argued that the Applicant's claims of prejudice were over-stated and ill-founded.

78. The Applicant said that she suffered from a rare life threatening neuro-muscular illness and from bronchitis. The Applicant also stated she was allergic to most antibiotics. The Applicant was of the view that the damp and mould arising from the disrepair to the roofs posed a serious risk to her health, particularly if she developed a bacterial infection which she was unable to treat because of her allergy to antibiotics. The

Applicant had moved her bed into the lounge to reduce the risk from the damp in the bedroom. Mr Court had refused the Applicant's request for a de-humidifier.

79. The Applicant said the problems with the roofs had impeded her attempts to sell her apartment. The Applicant had originally put the house on the market with local estate agents around the time of the water ingress in December 2012. The Applicant was desirous of moving to the Bournemouth area so that she could be close to family and friends. The Applicant considered that she could not sell the property whilst the repairs to the roofs were pending so she took the property off the market.

80. Around May/ June 2014 the Applicant said she found a cash buyer for her apartment. According to the Applicant, the cash buyer was living with the Applicant's friend at apartment 12 whilst she awaited completion of the purchase of apartment 10 following the works to the roofs. The Applicant said there were no agents involved in the transaction and that she kept her buyer advised of the situation by text. The Applicant stated that her buyer eventually lost patience with the purchase having been put off by the issues the Applicant was having with Mr Court over repairs and maintenance to the property.

81. The Applicant argued that the real issue was the length of time, almost 20 months, taken by the Respondent to complete the works to the roofs. The Applicant maintained that the delays with the repairs had an adverse effect on her health from the unnecessary lengthy exposure to damp. The delays also compromised her enjoyment of the property because of the cramped living conditions after moving her bed into the lounge. The Applicant has subsequently moved out of apartment 10 and now lived in rented accommodation in Dorset.

82. The Applicant said she was denied the right to make representations upon the proposed works by the Respondent's failure to consult. If she had been afforded the opportunity to consult, the Applicant would have asked for the works to have been finished within a reasonable period of time even if they had cost slightly more.

83. The Respondent argued that the Applicant had adduced no compelling evidence to substantiate her claims about her health being affected by the damp living conditions, and that she had moved her bed into the living room. The Respondent asserted there was no corroboration of her statement that she had a cash purchaser who eventually lost patience because of the delays to the roof works. Mr Court pointed out that during this period he received no landlord enquiries from a prospective purchaser which in his view cast doubts on the existence of the cash purchaser.

84. The Respondent maintained that the Applicant had no objective grounds for pleading prejudice. The Respondent said the Applicant had accepted that the works were necessary and that they were done to a

good standard. The Respondent also pointed out that the Applicant no longer challenged the reasonableness of the costs.

85. The Respondent considered that it was entitled to rely on the fact that no other leaseholder had objected to completion of the works to the roofs.

86. The Respondent relied on the leaseholders' replies to its application for dispensation. There were five leaseholders including Mr and Mrs Court who actively supported the application. Miss Robertson, the Applicant, in these proceedings, was the sole objector.

87. The Respondent said that if the leaseholder's position to the application for dispensation was assessed from the perspective of their contribution to the service charge it would show that 94.59 per cent of the lessees supported or did not object to the Respondent's application for dispensation.

88. At this stage the Tribunal is determining whether the evidence supports a finding of prejudice. The question of whether it amounts to prejudice within the statutory context of section 20ZA of the 1985 Act will require further analysis having regard to the judgment of the Supreme Court in *Daejan Investments (Limited) v Benson and others* [2013] UKSC 14.

89. The Tribunal starts with the agreed fact that the Respondent did not consult with the Applicant about the proposed works to the roofs, which meant she was denied the opportunities to make representations on the proposed works and to put forward the name of a contractor. The Respondent also accepted that the roofs to the apartment were defective and had caused water ingress and damp to the property. The Tribunal has already found that the Respondent was aware of these defects in December 2012 and took awhile to remedy them, almost 20 months in the case of the pitched roof.

90. The Tribunal, on balance, finds the Applicant had health problems which would have been exacerbated by the damp living conditions. The Tribunal acknowledges that the Applicant produced no evidence from health professionals to substantiate her state of health. The Tribunal, however, placed weight on paragraph 2 of her witness statement dated 9 September 2015 [A B2] which was not challenged by Mr Court's response dated 24 September 2015 [A C11]. At the hearing Mr Court said in evidence that he was aware of the Applicant's life threatening illness. Finally in his letter of 12 March 2014 to the Applicant's solicitors Mr Court stated he was familiar with the unfortunate position in which the Applicant finds herself.

91. The Tribunal is not convinced that the Applicant lost a cash buyer for her property because of the delay in carrying out the works to the roof. The contents of her witness statement illustrated the arbitrary nature of the supposed arrangement with the buyer. Mr Court in his response at

paragraph 11 [A C12] explained that the Applicant had tried without success to market apartment 10 with several agents. Mr Court believed the stumbling block to the sale of apartment 10 was the price being asked by the Applicant which was £115,000 some £8,000 more than the last sale of a one bedroom flat at York Place.

92. The Tribunal considers the Applicant's statement that she would have proposed the completion of works in a more timely fashion even if they had cost slightly more, together with the risk to her health from the delay in the works demonstrated that she was prejudiced by the Respondent's failure to consult.

93. The Tribunal accepts that the finding of prejudice in paragraph 91 has to be weighed against the facts of the works being necessary, completed to a reasonable standard and within the bounds of reasonable costs. This will be done when the Tribunal examines the law.

94. The Tribunal considers the Respondent's reliance on the views of the other leaseholders relevant to the eventual determination of this dispute. The leaseholders have been named as Respondents to the dispensation proceedings. The leaseholders except the Applicant have not submitted an application for determination of the reasonableness of the service charge for the roof repairs. Further the other leaseholder have not suggested they were prejudiced in some way by the Respondents' failure to consult, which was not surprising because they were not directly affected by the water ingress from the defects in the roofs.

95. The views of the other leaseholders are relevant because the decision on dispensation would be binding on the Respondent and all leaseholders at York Place, not just the leaseholder of apartment 10.

Summary of the Findings of Fact

96. The Tribunal summarises its findings as follows. Paragraphs to the decision are in ( ):

(a) In December 2012 apartment 10 suffered water ingress arising from defects in the roofs causing damage to the interior of the apartment (28).

(b) The Respondent agreed to the re-decoration of some parts of the apartment affected by water damage at a cost of £1,700, which was recovered through the service charge (35).

(c) The Applicant accepted that the works done to the roofs by the Respondent's contractors were necessary and completed to a good standard. Further the Applicant accepted that the costs of those works (except scaffolding) were reasonable (30).

(d) The works to the flat roof were completed some six months after the incident in December 2012 (31). The Tribunal considers the time taken to repair the flat roof unduly lengthy for which Mr Court offered no explanation (65).

(e) The defects in the pitched roof contributed to the water ingress to apartment 10 in December 2012, and as a result the Respondent took nearly 20 months to remedy the problem (50). Mr Court was aware that the defects in the flat roof and in the pitched roof had contributed in December 2012 to the water ingress and damp in the Applicant's apartment (60). The decisive factor for the delay in completing the repairs to the pitched roof was the availability of the Respondent's preferred contractor (63).

(f) The costs for the two sets of works to the roofs met the financial threshold[5] to trigger the requirement to consult the leaseholders over those works in accordance with the provisions of the Service Charges (Consultation Requirements) (England) 2003. The works to the roofs were qualifying works within the meaning of section 20 of the 1985 Act and the 2003 Regulations (36).

(g) The Respondent did not consult with the Applicant and the other leaseholders in connection with the repairs to the flat roof (37).

(h) The January 2014 Circular for the proposed works to the pitched roof which was sent by Mr Court to the leaseholders did not comply with the requirements of the 2013 Regulations (40).

(i) Although the Tribunal considers harsh the description of Mr Court's conduct as egregious, the Tribunal is satisfied that he rode roughshod over the Applicant's rights to be consulted on the nature of the works which was due to his ignorance of his legal responsibilities as a landlord (76).

(j) The Applicant was denied by the Respondent's failure to consult the opportunities to make representations on the proposed works and to put forward the name of a contractor (89).

(k) The Applicant had health problems which would have been exacerbated by the damp living conditions (90).

(l) The Applicant's statement that she would have proposed the completion of works in a more timely fashion even if they had cost slightly more, together with the risk to her health from the delay in the works demonstrated that she was prejudiced by the Respondent's failure to consult (92).

[5] The consultation requirements apply where the costs result in the relevant contribution of any tenant being more than £250.

(m) The Respondent's reliance on the views of the other leaseholders is relevant to the eventual determination of this dispute (93).

Consideration

97. The two applications before the Tribunal raise a single issue for determination which is whether it is reasonable to dispense with all the consultation requirements in relation to the works to the flat and pitched roofs above apartment 10 at York Place.

98. The Tribunal has three options: to refuse dispensation which would limit the cost of the works that could be recovered from each leaseholder to £250, grant dispensation, or grant dispensation with conditions.

99. The legal landscape for the Tribunal's jurisdiction in respect of dispensation of consultation requirements was changed significantly by the majority decision of the Supreme Court in *Daejan Investments (Limited) v Benson and others* [2013] UKSC 14.

100. The Supreme Court overturned current thinking by deciding that dispensation applications should not be determined solely on the basis of whether the landlord had seriously breached or departed from the consultation requirements. In Lord Neuberger's view, adherence to the consultation requirements should not be treated as an end in itself or that the dispensing jurisdiction was a punitive or exemplary exercise.

101. Lord Neuberger decided that the requirements were a means to an end which was the protection of tenants in relation to service charges. Lord Neuberger explained his thinking as follows:

> "[40] Section 20ZA(1) gives little specific guidance as to how an LVT is to exercise its jurisdiction "to dispense with all or any of the [Requirements]" in a particular case. The only express stipulation is that the LVT must be "satisfied that it is reasonable" to do so. There is obvious value in identifying the proper approach to the exercise of this jurisdiction, as it is important that decisions on this topic are reasonably consistent and reasonably predictable. Otherwise, there is a real risk that the law will be brought into disrepute, and that landlords and tenants will not be able to receive clear or reliable advice as to how this jurisdiction will be exercised.
>
> [42] So I turn to consider s 20ZA(1) in its statutory context. It seems clear that ss 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in s 19(1)(b) and the latter in s 19(1)(a). The following two sections, namely ss 20 and 20ZA appear to me to be intended to reinforce, and to give

practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of s 19.

[44] Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

[45] Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be - ie as if the Requirements had been complied with".

102. According to Lord Neuberger, the sole question for the Tribunal when considering how to exercise its jurisdiction on dispensation applications is whether the tenants have suffered relevant prejudice from the landlord's breach of requirements.

103. Lord Neuberger explained what was meant by relevant prejudice at paragraph 65 of the judgment:

> "[65] Where a landlord has failed to comply with the Requirements, there may often be a dispute as to whether, and if so to what extent, the tenants would relevantly suffer if an unconditional dispensation was accorded. (I add the word "relevantly", because the tenants can always contend that they will suffer a disadvantage if a dispensation is accorded; however, as explained above, the only disadvantage of which they could legitimately complain is one which they would not have suffered if the Requirements had been fully complied with, but which they will suffer if an unconditional dispensation were granted)".

104. Lord Neuberger said the tenants had the factual burden of identifying some relevant prejudice that they would or might have suffered from the landlord's failure to consult. Lord Neuberger did not consider his conclusion would place an unfair burden on tenants saying:

> "[67] ..... it is true that, while the legal burden of proof would be, and would remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants. However, given that the landlord will have failed to comply with the Requirements, the landlord can scarcely complain if the LVT views the tenants' arguments sympathetically ..... Further, the more egregious the landlord's failure, the more readily an LVT would be likely to accept that the tenants had suffered prejudice".
>
> "[68] The LVT should be sympathetic to the tenants not merely because the landlord is in default of its statutory duty to the tenants, and the LVT is deciding whether to grant the landlord a dispensation. Such an approach is also justified because the LVT is having to undertake the exercise of reconstructing what would have happened, and it is because of the landlord's failure to comply with its duty to the

> tenants that it is having to do so ..... This does not mean that LVT should uncritically accept any suggested prejudice, however far-fetched, or that the tenants and their advisers should have carte blanche as to recovering their costs of investigating, or seeking to establish, prejudice. But, once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it".

105. Turning to the facts in this case, the Tribunal found that the Applicant suffered prejudice by the Respondent's failure to consult because she was denied the opportunity to request completion of the works in a more timely fashion even if they had cost slightly more.

106. The Tribunal considers the prejudice articulated by the Applicant crossed the threshold of relevant prejudice as defined by Lord Neuberger. The threshold is the prejudice that the Applicant would suffer if unconditional dispensation was granted, not the prejudice from the failure to consult.

107. The prejudice suffered by the Applicant of being unable to put forward her case for the works to be done more quickly would remain unabated if the Tribunal granted unconditional dispensation. Moreover the strength of the prejudice was tangible because of the undue length of time taken by the Respondent to repair the roofs without adequate explanation which exposed the Applicant to unnecessary risks to her health from the damp present in her property whilst the roofs stayed in a state of disrepair.

108. The Tribunal's findings on the prejudice suffered by the Applicant are derived from an evaluation of the evidence which is set out in the preceding section. The credibility of the Applicant's evidence was given added impetus by Mr Court's complete disregard of the consultation requirements, and his failure to give an adequate explanation for the length of time taken to effect the repairs.

109. Counsel for the Respondent raised two further arguments as to why the prejudice suffered by the Applicant did not meet the requirement of relevant prejudice.

110. Counsel submitted that the obligation to consult went to the appropriateness of the works. Counsel also said that the requirement to obtain more than one quote was about the quality and the cost of the works.

111. Counsel pointed out that the Applicant had conceded the works to the roofs were necessary and they were finished to a reasonable standard. In addition the Applicant had accepted at the hearing that the costs of the works were reasonable. Given the concessions made by the Applicant, counsel argued that unconditional dispensation should be granted because the extent, quality and cost of the works were in no way affected by the Respondent's failure to consult.

112. Counsel's second argument was that the Applicant's reliance on the time taken to carry out works was misguided. According to counsel, such delay did not go to the question of the appropriateness of the works, and, therefore, did not constitute relevant prejudice. In this regard counsel relied on Lord Neuberger's statement at paragraph 81 of the *Daejan judgment*, in particular the phrase that *prejudice has to be measured as at the date of the breach of the requirements:*

> "[81] First, the tenants do not appear to have identified to the LVT any relevant prejudice which they suffered, or may have suffered, as a result of Daejan's failure to comply with the Requirements. As mentioned, the Upper Tribunal described the evidence of any such prejudice as "weak". In this court, no contention as to the existence of possible relevant prejudice was advanced by Mr Rainey QC or Mr Fieldsend, save that they suggested that (i) Rosewood may have agreed to carry out the Works for some £11,000 less than the contract sum ultimately agreed with Mitre, and (ii) they relied on the fact that Mitre overran the six-month contract substantially. As to (i), I am not sure where the £11,000 comes from, but it is substantially less than the £50,000 offered by Daejan. As to (ii), I would have thought that the prejudice has to be measured as at the date of the breach of the Requirements, and anyway there was no attempt to show that Rosewood would have been any quicker or to quantify any prejudice".

113. The Tribunal considers that Lord Neuberger provides the answer to counsel's arguments at paragraph 43 of the *Daejan* judgment:

> "[43] Thus, the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them go to both the quality and the cost of the proposed works. Mr Rainey QC and Mr Fieldsend for the Respondents point out that sometimes the tenants may want the landlord to accept a more expensive quote, for instance because they consider it will lead to a better or quicker job being done. I agree, but I do not consider that it invalidates my conclusion: loss suffered as a result of building work or repairs being carried out to a lower standard or more slowly is something for which courts routinely assess financial compensation".

114. The Tribunal's interpretation of paragraph 43 is that Lord Neuberger acknowledges that appropriateness of works is a broad concept which incorporates the speed at which the works are carried out.

115. The Tribunal does not consider there is a conflict between paragraphs 43 and 83. In paragraph 83, Lord Neuberger was dealing with the specific facts of the *Daejan* decision. In that case the landlord (*Daejan)* had carried out some consultation in accordance with the 2003 Regulations. Further the tenants had been given a substantial opportunity to comment on the proposed works, and had taken full advantage of that opportunity. In those circumstances it would be possible to pinpoint a date in *Daejan* when the requirements were breached. Finally Lord Neuberger held doubts on the facts of *Daejan*

about whether the tenants had been prejudiced by the overrunning of the contract.

116. The facts of this case were very different from *Daejan*. The Respondent had not conducted any consultation in accordance with the 2003 Regulations. The Respondent's breach of the requirements was, therefore, ongoing and not fixed to a particular date. Further the prejudice suffered by the Applicant concerned her inability to request an earlier completion of works rather than any alleged prejudice arising from the overrunning of building works.

117. The Tribunal concludes that Lord Neuberger's comments at paragraph 83 were fact specific and had no wider application unlike his comments at paragraph 43 which were dealing with general principles.

118. The Tribunal is, therefore, satisfied that the right to be consulted under section 20 of the 1985 Act can relate to the timing of the repairs which goes to the appropriateness of the works. The fact that the Applicant has not challenged the costs and the standard of the finished works did not detract from the prejudice suffered by the Applicant arising from her inability to influence the timing of the works. As a result the repairs took an inordinate length of time which affected the Applicant's health and for which the Respondent provided no adequate explanation.

119. The Tribunal concludes that the Applicant has suffered relevant prejudice from the Respondent's failure to consult. In those circumstances the Tribunal does not consider that it is reasonable to make an order for unconditional dispensation.

120. Originally the Tribunal was minded to refuse the application for dispensation which would have meant that each leaseholder would have contributed no more than £250 towards the costs of the each of the roof works and of the scaffolding. The Tribunal is, however, conscious that none of the other leaseholders had objected to the application for dispensation with five leaseholders including Mr and Mrs Court positively supporting the application. Further it is unlikely that another leaseholder would have a case of prejudice because the works principally affected the roofs over apartment 10.

121. The Tribunal, therefore, considers that it is reasonable for an order to be made granting the Respondent dispensation from the consultation requirements but with conditions that apply solely to the Applicant.

122. The Applicant proposed the following conditions to the dispensation:

(a) The Respondent should not be allowed to recover the full cost of the repairs, the reduction being assessed by the Tribunal to reflect the prejudice suffered.

(b) The Respondent should pay compensation to the Applicant by reference to the diminution in the enjoyment of the property between December 2012 and August 2014, plus compensation for loss of a purchaser.

(c) The Respondent should pay the reasonable costs of the Applicant in relation to the application for dispensation and the Applicant's own application.

(d) The Respondent's costs in connection with this application should not be recoverable through the service charge.

123. The costs of the works were £10,300 for the flat roof, and £11,700 for the pitched roof plus £2,340 for the scaffolding. The Tribunal is satisfied on the evidence[6] that the costs of the scaffolding were part and parcel of the works to the pitched roof, and should be included in the pitched roof costs which makes a total of £14,040. The Applicant's contribution to those costs under the lease is 5.41 per cent which was £557.23 for the flat roof, and £759.56 for the pitched roof.

124. The Tribunal considers the Applicant should be in the same position as she would be if the application for dispensation had been refused. The Tribunal, therefore, restricts the Applicant's contribution to the costs for each of the roof works to £250 making a total of £500, which will be made a condition of the dispensation. For the avoidance of doubt the costs of the pitched roof works included the scaffolding costs.

125. The Tribunal considers limiting the Applicant's contribution to £500 is a sufficient reduction in the Respondent's recoverable costs to reflect the degree of prejudice suffered by the Applicant from the Respondent's non-compliance with the consultation requirements.

126. The Tribunal is not inclined to order a separate amount for compensating the Applicant for diminution in the enjoyment of the property between December 2012 and August 2014.

127. The Tribunal takes the view that the form of compensation envisaged for conditions attached to dispensation is not open-ended and is coloured by the statutory purposes for consultation. In this respect compensation which equates with a reduction in the costs charged for the works has an immediate relationship with those purposes and protects the tenant from being charged too much for inappropriate works. It follows that the total amount of compensation ordered as conditions to a grant of dispensation should not exceed the protection given in statute otherwise the power to refuse dispensation becomes otiose.

128. By virtue of the order in paragraph 125 above, the Applicant has already been put in the same financial position as if dispensation had

[6] See Mr Cox's email at [A B35].

been refused. A further order of compensation would, go beyond the protection offered to tenants by the consultation requirements. The Tribunal considers this to be a significant factor when exercising its discretion to grant dispensation with conditions. In short the tenant should not be in a better financial position than she would have been if dispensation had been refused.

129. The Tribunal also notes that the Respondent arranged for the re-decoration of the damaged parts of the Applicant's lounge after the repairs to the flat roof. The cost was £1,700 which was paid from the service charge fund.

130. The Tribunal, therefore, refuses to order a separate amount to compensate the Applicant for diminution in the enjoyment of her property between December 2012 and August 2014.

131. The Tribunal was not convinced on the evidence that the Applicant lost a purchaser because of the delay in carrying out the works to the roofs (se paragraph 91 above). The Tribunal makes no order for compensation for loss of a purchaser.

132. The Applicant's solicitors provided the Tribunal and the Respondent with its statement of costs in connection with the proceedings. The total bill was £5,013 (VAT exclusive), which included a hearing fee of £750 for counsel and Tribunal fees of £95.

133. Respondent's counsel objected to an order for costs on the ground that the Respondent had acted reasonably throughout the proceedings. Counsel made no observations on quantum.

134. Applicant's counsel disagreed, saying the Respondent's conduct of the case was wholly unreasonable. Counsel said until the opening of the hearing the Respondent had clung onto the misapprehension that it had complied with the statutory consultation requirements despite clear evidence to the contrary. According to counsel, the Respondent's persistent pursuit of a bad point and late change of mind unnecessarily increased the Applicant's costs and constituted unreasonable conduct.

135. The Tribunal's power to order costs as a condition of dispensation stands apart from its limited jurisdiction to order wasted or unreasonable costs.

136. According to Lord Neuberger, the grant of dispensation should be seen as an indulgence to the landlord at the expense of the tenant. In those circumstances, Lord Neuberger said it seemed appropriate where a tenant reasonably incurs costs in investigating the landlord's claim for dispensation that the landlord should pay the tenant's costs as a term of being accorded the indulgence.

137. The Applicant's costs were incurred on two applications, the application for service charge, and the counter-application for

dispensation. Although the two applications were closely related, it appeared on the papers, that the service charge application originally included matters not directly connected with the roofs, namely the door entry system.

138. The Respondent made no representations on whether the costs incurred by the Applicant were unreasonable.

139. The Tribunal considers that it would be appropriate for the Respondent to pay most of the costs claimed by the Applicant, particularly as the Tribunal is according the Respondent an indulgence by granting dispensation from the consultation requirements in connection with the works to the roofs.

140. The Tribunal orders the Respondent to pay the hearing fee of Counsel in full, £750, and the solicitors' costs less £500, namely £2,668 plus VAT[7]. The deduction of £500 reflects the work done by the Applicant's solicitors not directly connected to the dispensation application.

141. The Tribunal orders the Respondent to reimburse the Applicant with the hearing fee of £95.

142. The Tribunal adds that it would have made an order against the Respondent for unreasonable costs under rule 13 of the Tribunal Procedure Rules 2013, if dispensation had been refused. The Tribunal agrees with the Applicant's assessment that the Respondent behaved unreasonably in persisting with its claim that it had complied with the consultation requirements until the day of the hearing.

143. The Tribunal observes that the Respondent is entitled under paragraph 19 to the Sixth schedule to recover its legal costs in connection with Tribunal proceedings through the service charge.

144. The Tribunal has accorded the Respondent with an indulgence of dispensation from the consultation requirements in connection with the works to the roofs above apartment 10. The Tribunal also found in favour of the Applicant in that she suffered relevant prejudice from the Respondent's failure to consult. Given these findings the Tribunal is satisfied that it is just and equitable for an order to be made under Section 20C of the 1985 Act, to prevent the Respondent from recovering its costs incurred in connection with the Tribunal proceedings through the service charge.

The Decision

145. The Tribunal decides the following:

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[7] The VAT is on the solicitors' costs and the barrister's hearing fee. The Applicant's solicitors are to calculate the Vat and inform the Respondent's solicitors accordingly.

(a) The Applicant had suffered relevant prejudice from the Respondent's failure to consult. The Applicant was denied the opportunity to request completion of the works in a more timely fashion even if they had cost slightly more. The strength of the prejudice was tangible because of the undue length of time taken by the Respondent to repair the roofs without adequate explanation which exposed the Applicant to unnecessary risks to her health from the damp present in her property whilst the roofs stayed in a state of disrepair.

(b) It is reasonable for an order to be made granting the Respondent dispensation from the consultation requirements but with conditions that apply solely to the Applicant.

(c) The conditions are that the Applicant's contribution to the costs for each of the roof works to is restricted £250 making a total of £500. The Respondent shall pay £3,418 plus VAT towards the Applicant's legal costs, and to reimburse the Applicant with the hearing fee of £95.

(d) An order under Section 20C of the 1985 Act, preventing the Respondent from recovering its costs incurred in connection with the Tribunal proceedings through the service charge.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

(e) the manner in which it is payable.

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

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

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

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

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

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

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

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

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

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

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

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

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

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

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

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

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

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