



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

Case Reference : **CAM/00KF/LSC/2020/0017**

HMCTS : **PHONE**

Property : **24 & 26 Manor Road, Westcliff on Sea,
Essex SSo 7SS**

Applicant (Landlord) : **Focustime Limited**
Managing Agent : **Arkasian Property Management**

Respondent (Tenants) : **Miss S Barr Flat 1, 24 Manor Road**
Mr I Dosser Lasting Power of Attorney for:
Ms S Dosser Flat 2, 24 Manor Road
Mr S Ford Flat 3, 24 Manor Road
Mr C Mehmet Flat 4, 24 Manor Road
Mrs Pike Flat 5, 24 Manor Road
Ms S Rossell Flat 6, 24 Manor Road
Branch & Co Flat 1, 26 Manor Road
Personal Representative of:
Mrs P Morris Flat 2, 26 Manor Road
Ms L Dobinson Flat 3, 26 Manor Road
Mr & Mrs Otto Flat 4, 26 Manor Road
Raisanka Limited Flat 5, 26 Manor Road
Mr G Maylin Flat 6, 26 Manor Road

Type of Application : **to determine the reasonableness and
payability of the Service Charges (section
27A Landlord and tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002)**

**to determine whether the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(section 20C of the Landlord and Tenant
Act 1985)**

**to reduce or extinguish the Tenant's
liability to pay an administration charge in
respect of litigation costs (paragraph 5A of
Schedule 11 of the Commonhold and
Leasehold reform Act 2002)**

Date of Application : **30th March 2020**
Tribunal : **Judge J R Morris**
Date of Hearing : **10th September 2020**
Date of Decision : **14th September 2020**

DECISION

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Covid-19 Pandemic: Remote Video Hearing

This determination included a phone hearing on the papers which has been consented to by the parties. The form of remote hearing was by telephone conference call. A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as telephone proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that the cost of the damp proofing works, and the removal and reinstatement of the kitchen and bathroom fixtures and fittings to enable the damp proofing works to be carried out is payable under the Lease by the Respondents to the Applicant.
2. The Tribunal finds that the Applicant has complied with the consultation requirements pursuant to section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
3. The Tribunal determines that the cost to be incurred of £1,750.00 for the damp proofing works and £2,330.00 plus VAT for the removal and

reinstatement of the kitchen and bathroom fixtures and fittings to enable the damp proofing works to be carried out is reasonable.

4. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Applicant's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Respondents.
5. The Tribunal makes an Order extinguishing the Respondents' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Reasons

Introduction

6. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges to be incurred are reasonable and payable.
7. The Respondents seek an order for the limitation of the Applicant's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
8. Directions were issued 3rd June 2020.

Background

9. The Applicant is the Landlord of the Property. It appears that the Property was converted into 12 flats (six at No 24 and six at no. 26) let on long leases to the Respondents.
10. The Applicant indicates in the Application Form that works are required to the damp proof course at No. 26 and that fixtures and fittings would have to be temporarily removed from the kitchen and bathroom in Flat 2 to enable the works. The Applicant includes in the cost of the planned repair works the costs of removing and reinstating items in the kitchen and bathroom to enable the damp proof repair works to be carried out.
11. Also, in the Application Form the Applicant said that the Leaseholder of Flat 2 at No. 26 would have to vacate, because of the temporary removal of the fixtures and fittings in the bathroom and kitchen. The Applicant said that the Leaseholder is elderly and has mobility difficulties and has no-one nearby with whom she could stay. The Applicant included in the costs of the planned works the cost of alternative accommodation for the relevant Leaseholder. By a letter dated 4th August 2020 the Applicant informed the Tribunal that since making the Application the Leaseholder of Flat 2 has sadly died and that the alternative accommodation is no longer claimed and therefore not in issue.

12. In the Application Form the Applicant referred to section 20 and 20ZA of the Landlord and Tenant Act 1985 but this is not an application to dispense with the consultation requirements in relation to these major works. A separate application would have to be made to seek any such dispensation. It appears that the Applicant meant only that it had begun the consultation process required under section 20 of the 1985 Act and this was confirmed at the Hearing.
13. The Applicant states that some of the Respondent Leaseholders have in their consultation responses indicated that they feel they should not have to contribute towards the costs of the damp proof repair works or the associated costs of removing and reinstating items in the kitchen and bathroom to enable the damp proof repair works to be carried out.

Issues

14. The Tribunal has identified the following issues are to be determined:

Issue 1 – Payability under the Lease

15. The Tribunal is to determine whether the works are within the Landlord's obligations and whether the cost of the works are payable by the Leaseholders under the Lease.

Issue 2 – Compliance with the Consultation Requirements

16. The Tribunal is to determine whether the Landlord has complied with the consultation requirements under section 20 of the 1985 Act.

Issue 3 – Reasonableness of the Costs

17. The Tribunal is to determine whether the costs to be incurred of the damp proof repair works and the associated costs of removing and reinstating items in the kitchen and bathroom to enable the damp proof repair works to be carried out are reasonable.

Issue 4 – Application under section 20C Landlord and Tenant Act 1985

18. The Tribunal is to determine whether an order for the limitation of the Landlord's costs of the proceedings under section 20C of the Landlord and Tenant Act 1985 should be made.

Issue 5 – Application under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

19. The Tribunal is to determine whether an Application for an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should be made.

Description of the Development and Property

20. The Tribunal did not inspect the Property but from the Lease plans, the parties' submissions and the Internet found the Property to be two adjacent semi-detached houses converted into 12 flats, six at no. 24 and six at no. 26. The common parts comprise an entrance hall with stairs rising to a landing on each floor off which are the flats. The building is rendered to front and sides at ground and first floor level and there are dormer windows to the roof. Flat 2 is a ground floor flat at the rear of Number 26.

The Lease

21. A Copy of the Lease for Flat 2 dated 27th April 1988 between Carrivos Properties Limited (1) (Landlord) and Mark Andrew Kichenside (2) (Tenant) was provided. The relevant terms which are understood to be common to all the Leases, are set out below. The title to Flat 2 is registered at HM Land Registry under Title Number EX379400.
22. Clause 1 sets out the following relevant definitions:
- (a) ...
 - (b) ...
 - (c) *“the premises” - comprises the flat more particularly described in paragraph 3 of the Particulars and the First Schedule hereto*
 - (d) *“the Estate” - means the freehold property Numbers 24 and 26 Manor Road Westcliff on Sea Essex as the same is registered at HM Land registry under Title Numbers EX176589 and EX179465 respectively*
 - (e) *“the term” - is Ninety-nine years from the 25th Day of December one thousand nine hundred and eighty-six*
 - (f) – (j) ...
 - (k) *“the Other Leases” – the leases of the other flats forming part of the Estate to whom the Landlord has granted (or if any of the said other flats be vacant at the date hereof the Landlord intends to grant) leases thereof upon similar terms mutatis mutanda to this Lease*
 - (l) *“the Service Charge” – the contribution referred to in Clause 5 of the Fifth Schedule hereto) from time to time payable by the Tenant*
23. Paragraph 3 of the Particulars states:
The Premises: All that flat situate on the ground floor of Number 26 Manor Road, Westcliff on Sea aforesaid and is shown for the purposes of identification on the plan annexed hereto (“the Plan”)
24. The First Schedule describes Flat 2 as follows:
The Premises as described in paragraph 3 of the Particulars and which shall for the purposes of obligation as well as grant include
- (i) *The plastered coverings and plaster work and other decorative and coverings of the ceilings and the walls bounding and within the Premises*
 - (ii) *The doors (but not the exterior of the front door) and windows (including glass) and all windows within the premises*
 - (iii) *All internal walls and partitions*
 - (iv) *The floorboards and other floor surfaces of the premises*

- (v) *All cisterns pipes and other apparatus or conducting media whatsoever wheresoever situate which exclusively serve the premises*
- (vi) *All fixtures fittings and sanitary and water apparatus in or about the premises*

PROVIDED THAT paragraphs (i) to (vi) shall not include

- (a) *Any part of the Estate which shall lie above the surfaces of the ceilings or below the floorboards (excepting such items as are specifically referred to in paragraph (v) above*
 - (b) *the main walls the main timbers joists or other structural parts of the Estate*
 - (c) *Any cisterns tanks or other apparatus or conducting media which do not exclusively serve the Premises*
 - (vii) *The staircases of the Estate*
 - (viii) *All fixtures fittings and apparatus constituting the Landlord's fixtures and fittings*
25. *The Third Schedule sets out the Landlord's rights of which paragraph 4 states: Such rights of access to and entry upon the Premises upon prior appointment (except in cases of emergency) as are necessary or desirable for the proper and practicable observance and performance of the Landlord's covenants in this Lease*
26. *The Fifth Schedule sets out the Tenant's obligations the relevant provisions of which are as follows:*
- 1. *To pay during the Term to the Landlord the rent the Service Charge and all other sums of money hereinbefore reserved and made payable at the times and in the manner provided in this Lease without deduction*
 - 5. (a) *To pay to the Landlord the Service Charge being a contribution of the costs charges and expenses from time to time incurred or to be incurred by the Landlord in respect of the matters set out in the Seventh Schedule hereto*
 - (b) *The contribution for each financial year of the term (commencing on the First day of January and ending on the 31st day of December in each year and shall be estimated by the Managing Agents for the time being of the Landlord ("the Managing Agents") or (if there shall be none) by the Landlord as soon as practicable prior to the commencement of each financial year and the Tenant shall pay to the Landlord on the First day of January of each year his estimated contribution for the relevant financial year*
 - (c) *As soon as practicable after the completion of each financial year and the actual amount of the said costs charges and expenses for the (preceding) financial year has been ascertained and notified in writing to the Tenant the Tenant shall pay to the Landlord not later than the date stated in such notification the balance due to the Landlord or (as appropriate) credited in the books of the Landlord with any overpayment*
 - 9. *To permit the Landlord and his agents workmen and Other Lessees and the owners and occupiers of any adjoining or neighbouring*

premises belonging to the Landlord at all reasonable times upon prior appointment (except in case of emergency) to enter upon the Premises for the purpose of executing repairs or alterations to or upon the Estate or such adjoining or neighbouring premises the Landlord or the persons so entering making good to the Tenant all damage thereby occasioned to the Premises

27. The Sixth Schedule sets out the Landlord's obligations the relevant provision of which are:
3. *Subject to the due payment by the Tenant of the Service Charge the Landlord will in a good and workmanlike manner whenever the same shall be required observe and perform the matters set forth in the Seventh Schedule hereto*
28. The Seventh Schedule sets out the provision regarding the items of the Service Charge the relevant provision of which are:
Any costs charges and expenses relating to
1. ...
 2. ...
 3. *The repair renewal cleansing maintenance and decorating of such parts of the Estate as shall not be the obligation of the Tenant or the Other Lessees and including in particular all structural parts of the Estate the roofs foundations thereof all conducting media for gas electricity water and drainage the master television aerial system the gardens parking spaces and boundaries*
 4. *The employment of contractors to carry out the Landlord's obligations.*

Submissions

29. A telephone conference hearing was held on 10th September 2020 at 10.00 which was attended by Ms K Lockett representing the Applicant, Mr I Dossier, Mr S Ford, Miss S Bar and Ms L Dobinson representing the Respondents.
30. As an initial point Mr Ford pointed out that the Leaseholders had already paid their Service Charges so far as the annual maintenance was concerned. He said that the estimates for the work which was the subject of these proceedings related to costs to be incurred and were therefore in addition to charges for insurance, utilities, and day to day repairs.

Issue 1 – Payability under the Lease

31. The proposed works were in two parts: 1) the damp proofing and 2) the removal and reinstatement of the kitchen and bathroom fixtures and fittings to give access for the damp proofing to take place. There was also an accommodation cost, but as stated above, this was no longer to be charged and so not in issue therefore representations in respect of this cost have been omitted from these Reasons.

Respondents' Submissions

32. The Respondents' submissions in respect of the two parts of the Proposed Works are summarised below.

Damp Proofing Works

Written Representations and Hearing Attendees

33. Miss S Barr (Flat 1, 24 Manor Road) in written representations stated that she did not dispute the cost of the damp proofing works and considered the costs to be within paragraph 5(a) of the Fifth Schedule and paragraph 3 of the Seventh Schedule.
34. Mr I Dosser, acting under a Lasting Power of Attorney for his mother Ms S M Dosser (Flat 2, 24 Manor Road), in written representations stated on behalf of his mother that she objected to paying for work undertaken inside Flat 2 unless it was covered by the definitions and description of shared costs in the Fifth and Seventh Schedule of the Lease.
35. At the hearing Mr Dosser clarified the position on his mother's behalf saying that whereas the damp proofing work might be considered work on the main structure of the building the removal and reinstatement of the kitchen and bathroom fixtures and fittings was not.
36. Mr S D Ford (Flat 3, 24 Manor Road) in written representations said that he did not dispute the damp treatment as it related to the structural part of the Estate i.e. walls, foundations etc. Therefore, the Service Charge is applicable, and he did not dispute it.
37. Ms L Dobinson (Flat 3, 26 Manor Road) in written representations said that she felt the work was inside the flat and therefore all the work was the responsibility of the Leaseholder of Flat 2, 26 Manor Road.
38. At the hearing, Ms Dobinson said, although she had not been a leaseholder for long, nevertheless, as a householder her experience was that internal repair and maintenance are the liability of the owner or tenant. In brief landlords are responsible for the outside and tenants are responsible for the inside.

Written Representations Only

39. Mr C Mehmet (Flat 4 24 Manor Road) said that he was only happy to pay his cost of the damp proof repairs.
40. Mr and Mrs Otto (Flat 4, 26 Manor Road) said they were happy to pay their share of the £1,700.00 charge of the chemical injection damp proof course for the building.
41. Raisanka Limited (Flat 5, 26 Manor Road) said that they were prepared to contribute their share in accordance with the Lease provisions.

42. Mr G D Maylin (Flat 6, 26 Manor Road) said he was willing to pay his share of the damp treatment needed to the structure as required in the Seventh Schedule of the Lease.

Removal and Reinstatement of the Kitchen and bathroom Fixtures and Fittings

Written Representations and Hearing Attendees

43. Miss S Barr (Flat 1, 24 Manor Road) in written representations stated that she considered the cost for removal and reinstatement of the kitchen and bathroom fixtures and fittings to be reasonable as necessary to the damp proofing provided, they were within paragraph 5(a) of the Fifth Schedule and paragraph 3 of the Seventh Schedule.
44. At the hearing, Miss Barr clarified her position saying that she agreed to the costs of removing and refitting provided the Lease made provision. She also expressed concern that the boiler was about 20 years old and that it may not be possible for it to be retuned in working order. She did not feel that she should be required to contribute to a new boiler. She did not consider it right that a new Leaseholder could capitalise on the work through the Service Charge.
45. Mr I Dosser, acting under a Lasting Power of Attorney for his mother Ms SM Dosser (Flat 2, 24 Manor Road), in written representations stated that she objected to paying for the removal and reinstatement of the fixtures and fittings inside Flat 2. He said that as the kitchen units, bathroom fittings and boiler etc., are inside Flat 2, they are not covered by the definitions and description of shared costs in the Fifth and Seventh Schedule of the Lease. He added that he had made these objections known to the Managing Agent in letters dated 20 and 23rd December 2019 and 15th January 2020 and verbally at meetings on 14th and 31st January 2020.
46. At the hearing Mr Dosser expressed concern that if it was determined that the cost of the removal and reinstatement of the fixtures and fittings could be included in the Service Charge his mother should not have to pay for any damage which might be caused to the fixtures and fitting in the course of the removal and re-fitting.
47. Mr S D Ford (Flat 3, 24 Manor Road), in written representations, referred the Tribunal to the Applicant's list of works with regard to the removal and reinstatement of the kitchen and bathroom fixtures and fittings. He submitted that none of these items were structural parts of the Estate and therefore not applicable to paragraph 3 of the Seventh Schedule. Also, the Leaseholder may have plans to remove and reinstate the fixtures and fittings at their own cost in order to sell or rent out the Property in which case the costs would be incurred twice, unnecessarily.
48. Mr Ford further submitted that any decision should make it clear that any damage caused during the works and replacement of fixtures and fittings as part of the work are both not covered by the Service Charge, on the basis that such items are not part of the structure of the Estate, and such damage can be

avoided by due diligence on the part of the Leaseholder of Flat 2, 26 Manor Road and the work people.

49. Mr Ford said that he had not been able to gain access to the Flat 2 to obtain alternative quotes.
50. Mr Ford requested that the matter be dealt with as soon as possible as the work was long overdue. The damp had been identified as early as 30th May 2018.
51. At the hearing Mr Ford said he wanted clarification a) on who should pay if the original fixtures and fittings were damaged in the course of removal and refitting or were no longer in a condition to be replaced following removal and b) who should pay if the Leaseholder of Flat 2 should want some of the fixtures and fittings replaced.
52. Ms L Dobinson (Flat 3, 26 Manor Road) said that the removal and reinstatement of the kitchen and bathroom fixtures and fittings was an internal matter for the Leaseholder of Flat 2. She did not consider it right to pay for a new kitchen and bathroom.
53. At the hearing Ms Dobinson reiterated the points raised by Miss Barr, Mr Ford and Mr Dosser and expressed the same concerns. Her view was that all these works are the responsibility of the Leaseholder and that they should not be added to the Service Charge to be paid by all the Leaseholders.

Written Representations Only

54. Mr C Mehmet (Flat 4, 24 Manor Road) was concerned that there were a lot of proposed works for the block and it seemed that there was something every week that needed doing. He said he did not feel it was either easy or fair to be demanding money from the leaseholders.
55. Mr and Mrs Otto (Flat 4, 26 Manor Road) disputed the item of the removal and reinstatement of the kitchen and bathroom fixtures and fittings in order to have access to apply a chemical injection into the failing damp proof course. They believed the charge should be met by the Leaseholder of Flat 2 and not diluted between the 12 Leaseholders.
56. Raisanka Limited (Flat 5, 26 Manor Road) said that they were prepared to contribute their share in accordance with the Lease provisions.
57. Mr G D Maylin (Flat 6, 26 Manor Road) said that he considered it is unfair to contribute towards the £2,333.00 cost for the removal and reinstatement of the kitchen and bathroom fixtures and fittings.

Applicant's Submissions

58. The Applicant's submissions in respect of these two parts of the Proposed Works are summarised below.

59. In the letters to the Respondents and in the Application Form the Applicant referred to Paragraph 5(a) of the Fifth Schedule, which sets out the Tenants' obligations, and Paragraph 3 of the Seventh Schedule, which sets out the items of the Service Charge, of the in the Lease.

Damp Proofing Works

60. In respect of the damp proofing works in each of the letters to the Respondents in answer to their submissions, the Applicant referred to Paragraph 3 of the Seventh Schedule. It was stated that: "the tenant is responsible for their proportionate share of the repair renewal cleansing maintenance and decorating of such parts of the Estate as shall not be the obligation of the Tenant or the Other Lessees and including in particular all structural parts of the Estate the roofs foundations thereof all conducting media for gas electricity water and drainage the master television aerial system the gardens parking spaces and boundaries. In our opinion the damp course falls within the main structure of the building."
61. Ms K Lockett confirmed at the hearing, the Applicant's view expressed in the letters to the Respondents, that the works were to the structure of the building and so a legitimate Service Charge item under paragraph 3 of the Seventh Schedule.

Removal and Reinstatement of the Kitchen and Bathroom Fixtures and Fittings

62. With regard to the removal and reinstatement of the kitchen and bathroom fixtures and fittings the Applicant stated in its letters to the Leaseholders that: "Unfortunately, due to the location of the damp course failure it is not possible to effect the necessary repairs without the removal of the kitchen and bathroom. The original fixtures and fittings will be reinstated, and no improvements made."
63. In response to the particular issues raised by Mr Ford the Applicant said they "would not expect the leaseholders to be responsible for any damage caused during the removal and replacement of the fixtures and fittings. Any liability incurred for such instance would be the responsibility of the contractor."
64. It was appreciated that "the repair is long overdue but the Managing Agent has attempted to avoid proceedings to a hearing by extending the periods between notices of the Section 20 procedure to allow discussions, further quotations and liaising between all twelve leaseholders to find common ground to allow the matter to proceed with a satisfactory outcome for all."
65. In addition the Applicant submitted an email in support of its view from Mr Alex Rubin of Tollhurst Fisher LLP, Solicitors in which it was suggested that as the removal of the fixtures and fittings are incidental to carrying out the work which has been identified as chargeable to the Leaseholders then the same can be said for the costs of the removal.
66. Ms K Lockett, at the hearing, stated in response to the questions asked by Mr Ford as follows:

a) With regard to who should pay if the original fixtures and fittings were damaged in the course of removal and refitting, the Applicant's view as expressed in the letter to Mr Ford, is that any damage caused by the contractor, would be the contractor's responsibility to make good.

b) With regard to who should pay if the Leaseholder of Flat 2 should want some of the fixtures and fittings replaced, she said the cost would have to be met by the Leaseholder of 26 Flat 2, Manor Court.

67. With regard to what the intentions were of any new Leaseholder, Ms Lockett said that she had written to the personal representative of the late Mrs Morris, who had been the Leaseholder of Flat 2, 26 Manor Court, asking whether she had any representations in respect of the tribunal proceedings. The person representative who is Mrs Morris's daughter confirmed that Mrs Morris had passed away on 6th June 2020 and that she was now settling her estate but no further communication had been received.

68. With regard to the issue raised by Miss Barr as to who should pay for a replacement boiler if the current one was now too old to operate following the removal and reinstatement it was said that the estimate was for the removal and reinstatement of the existing fixtures and fittings. If these were found to be in a condition that they could not be reinstalled then it was the Applicant's view that their replacement with a new fitting or fixture would be a cost to be met by the Leaseholder of Flat 2, 26 Manor Court.

Issue 2 - Compliance with the Consultation Procedure

69. The Applicant provided the following documents to support its submission that it had complied with consultation procedure under section 20 of the Landlord and Tenant Act 1985.

Notice of Intention (Part 1 of the Section 20 Consultation Procedure)

70. A Notice of Intention dated 7th May 2019 was served on the Leaseholders which stated that the Applicant intended to carry out the following works:

- Damp proof course treatment and tanking slurry to the bedroom, bathroom, kitchen and lunge of Flat 2, 26 Manor Road
- The removal and reinstatement of all fixtures and fittings within the above rooms in order for the works to be carried out.
- It was said that it was considered necessary to carry out the works in order to maintain the fabric of the building.
- Written observations in relation to the proposed works were invited to be sent to the Applicant within 30 days from the date of the Notice. The consultation period was to end on 6th June 2019.
- Leaseholders were also invited within the same period of 30 days to propose the name of a person from whom the Applicant should seek an estimate to carry out the proposed works.

Statement of Estimates and Notice of Landlord's Proposals (Part 2 of the Section 20 Consultation Procedure)

71. A Statement of Estimates and Notice of the Landlord's Proposals dated 7th January 2020 was served on the Leaseholders in which the Applicant stated that the Statement and Notice were served pursuant to the Notice of Intention the consultation period having ended on 6th June 2019.

72. The amount specified in the Estimates for the work were as follows:

Damp treatment

C&L Preservation £1,750.00

Homeguard Damp and Timber Ltd £3,154.00

Hillcrest Declined to quote

Fixtures and fittings removal and reinstatement

Ed Braun £2,330.00

RBT Plumbing & Heating £4,500.00

73. The Statement of Estimates and Notice of the Landlord's Proposals also included a sum for Accommodation for the Leaseholder but as this is no longer required it is omitted here.

74. The Statement of Estimates and Notice of the Landlord's Proposals stated that the Applicant proposed to recommend the estimates from C & L Preservation and Ed Braun subject to any observations received by the Applicant within 30 days of the date of the Statement of Estimates and Notice of the Landlord's Proposals. The consultation period was to end on 7th February 2020.

75. The Statement of Estimates and Notice of the Landlord's Proposals included the Leaseholders' observations and the Applicant's responses following the Notice of Intention (Part 1 of the Section 20 Consultation Procedure). These are summarised here as follows:

Leaseholder Question 1:

If C & L Preservation and Westleigh Plumbing are the preferred nominated contractor has a quote already been sought, if so, can you advise as to the costs?

Applicant's Response to Question 1:

The Applicant said it was not able to provide leaseholders with copies of the contractor's estimates before part II as this would give a nominated contractor who had yet to submit an estimate an unfair advantage. However, Leaseholders would be provided with copies of the estimates at Part II.

Leaseholder Question 2:

Can you advise Leaseholders what is meant by removal and reinstatement of all fixtures and fittings?

Applicant's Response to Question 2:

Drain down the hot and cold heating services.

Remove the WC and basin and set aside for reinstallation.

Remove pipework that will prevent the works being completed.

Remove kitchen worktops 2x plus some tiling including the sink and hob.

Remove 4x base units.

Remove the boiler, hot and cold flow and return, gas and condensing pipes and waste pipes. Cap off the cold gas supplies and check for leaks and carry out a drop test on the gas.

Remove 3x radiators and pipe work

Return to reinstate the boiler and associated pipework. Refill the hot and cold-water system and the central heating system adding new system inhibitor. Re-commission the boiler in line with Gas Safe Regulations.

Reinstall the kitchen-based units and worktops.

Reinstall the 3x radiators and refill and test working.

Reinstall the WC and basin using new pan and trap seals.

Test appliances for functionality and leaks. Apply a bead of silicon sealant as required.

Leaseholder's Question 3:

Does the Leaseholders contents insurance cover this work?

Applicant's Response to Question 3:

It is a matter for the tenant to approach her contents insurer if she wishes to make a claim. However, from the Applicant's experience damp is not an insured peril

Leaseholder's Question 4:

Does the buildings insurance cover this work?

Applicant's Response to Question 4:

Unfortunately, damp is not an insured peril.

76. In correspondence the Applicants stated that all of the Leaseholders have had ample opportunity to provide alternative quotations in accordance with the Section 20 Procedure. Contractors could have obtained access to Flat 2, 26 Manor Road before the Leaseholders had passed.
77. The Applicant confirmed that it had as Part 1 of the Consultation Procedure, served Notices of Intention and given the requisite period for the Leaseholders to make observations and nominate contractors.
78. The Applicant confirmed that it had as Part 2 of the Consultation Procedure served Notices of the Landlord's Proposals and the copies of the estimates and given the requisite period for the Leaseholders to make observations.
79. At the hearing Ms Lockett confirmed that the lowest estimate submitted by C & L Preservation and Ed Braun had been selected and so there was no need to serve a Notice of Works.
80. The Applicant submitted that it had complied with the consultation procedure.
81. The Respondents made no representations disputing the correctness of the Consultation Procedure.

Issue 3 – Reasonableness of Cost

82. The Applicant provided copies of the estimates from C & L Preservation for the damp proofing work and Ed Braun for the removal and reinstatement of the kitchen and bathroom fixtures and fittings.
83. At the hearing Ms Dobinson disputed the reasonableness of the costs to be incurred for the damp proof course. She said that she felt the matter of the damp should have been addressed sooner. By not doing so this had exacerbated the situation and that more extensive and expensive works were required as a result.
84. Ms Dobinson also disputed the estimate by Ed Braun. She said that she had been advised that certain of the work was unnecessary with particular reference to testing the boiler and removing the water supply, but she had not been able to provide evidence in time for the hearing. She added that as each of the two sets of works were to be carried out by separate contractors there was likely to be delay and duplication of costs.
85. Miss S Barr, Mr S D Ford stated that they considered the cost to be incurred for the damp proofing to be reasonable. None of the other Respondents disputed the cost to be incurred for the damp proofing. Miss Barr added that she had instructed C & L Preservation herself in the past and had found the firm to be reliable and competitive.
86. Although, Miss Barr, Ms Dosser, Mr Ford, Mr Mehmet, Mr and Mrs Otto, Mr Maylin and Ms Dobinson questioned the payability of the cost for the removal and reinstatement of the kitchen and bathroom fixtures and fittings, apart from Ms Dobinson the reasonableness of the cost to be incurred for the work was not disputed.
87. Mr Mehmet had commented on costs generally for maintenance but not specifically in relation to the costs which were the subject of these proceedings.
88. Concern was expressed that only estimates rather than fixed quotations had been obtained. Mr Dosser and Mr Ford asked how long the estimates would last.
89. Ms K Lockett said that the damp problem had been reported to the Applicant towards the end of 2019 and it had taken time to assess what had to be done and its possible costs and then to obtain estimates and undertake the section 20 consultation procedure.
90. Ms Lockett said that it had not been possible to obtain fixed quotations and that in the past the contractors had been found to work within or close to the price. If further work was found to be needed when it is commenced, then it might be necessary to conduct a further section 20 consultation procedure although that was not anticipated at this stage. She added that in the past they had honoured their estimates notwithstanding the time when the work had commenced.

Issue 4 - Section 20C & Issue 5 - Paragraph 5A of Schedule 11

91. Mr Ford made an application for an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
92. He said that he was a lay person, and this was the first time he had been involved in such proceedings and he felt confused and needed legal advice. However, he did not have the resources to obtain such advice each time an item of repair was disputed. He felt the Landlord should have continued conversations through face to face meetings with all the Leaseholders to try to narrow or eliminate issues in dispute before instigating formal proceedings.
93. The Applicant stated that in its opinion the costs should be borne equally by all parties, especially since it is the leaseholders that are failing to agree on the matters. Other than the cost for the Tribunal we will not be seeking any additional costs.
94. At the hearing the Respondents present said they took exception to it being said that they had "failed" to agree, as if they were just being difficult. They said that they had discussed the matter with the Applicant and it was found that there was mutual disagreement as to whether the cost of the removal and reinstatement of the kitchen and bathroom fixtures and fittings should be included in the Service Charge. The Applicant said that it should whereas the Respondents considered that it should not and was a matter for the Leaseholder of Flat 2. It was a matter of interpretation of the Lease.
95. The Respondents felt the Tribunal proceedings were pre-emptive and that there was still room for compromise. They added that they did not know about the proceedings until they had been instigated.
96. At the hearing Ms Lockett said the Applicant was correct in that agreement had not been reached on who should pay the cost of the removal and reinstatement of the kitchen and bathroom fixtures and fittings. She said that the Applicant had sought legal advice which had been that the cost could be included in the Service Charge. Ms Lockett also said that there had been a meeting on the matter at which it was apparent that agreement was not likely to be reached. Therefore, on 5th March 2020 a letter was sent to all Leaseholders informing them that the Applicant intended to make an application to the Tribunal which it did on 30th March 2020.
97. In response to the Tribunal's question Ms Lockett said that she could not identify any provision in the Lease which permitted the Applicant to claim the costs of these proceedings through either the Service Charge or directly from the Respondents.

Decision

98. The Tribunal considered each of the issues in turn and all the submissions made.

Issue 1 – Payability under the Lease

99. The Tribunal first considered whether the cost of the damp proofing is payable under the Lease.

100. The Tribunal considered Ms Dobinson's submission that the damp proofing was internal and therefore the responsibility of the Leaseholder of Flat 2 and not chargeable to the Service Charge. Whereas the summary she gave of "the outside of a property is a landlord's responsibility and the inside is the leaseholder's" is a fair general view, however, the provisions of long leases invariably are more complex.

101. The Tribunal examined the Lease and found that the damp proof course was not part of the Premises in that under First Schedule Provisos a) and b) it was expressly excluded as being part of "*the main walls ...or other structural parts of the Estate*".

102. This is confirmed by the plans produced by C & L Preservation and Homeguard Damp and Timber Ltd which identify for treatment the external walls, party walls and internal solid bearing walls within the Flat and exclude what are stud partition walls which are not main walls and are part of the demise not the Estate.

103. As part of the Estate, the Landlord under paragraph 3 of the Sixth Schedule is obliged to carry out the works referred to in the Seventh Schedule and the damp proofing comes within the items listed in paragraph 3 of the Seventh Schedule. Paragraph 5(a) of the Fifth Schedule identifies the Service Charge as being the matters set out in the Seventh Schedule and Paragraph 1 of the Fifth Schedule requires the Tenant to pay a contribution to the Service Charge. Paragraph 4 of the Third Schedule gives the Landlord the right of access to carry out these works and Paragraph 9 of the Fifth Schedule requires the Tenant to give the Landlord access to carry out the work.

104. The Tribunal therefore finds that the Lease authorises the damp proofing work to be carried out and that the cost of the work is chargeable to the Service Charge payable by the Tenants.

105. Secondly the Tribunal considered whether the cost of the removal and replacement of the fixtures and fittings is payable. The Tribunal examined the Lease and found that the Seventh Schedule includes "*Any costs charges and expenses relating to ... The repair renewal cleansing maintenance and decorating of such parts of the Estate as shall not be the obligation of the Tenant or the Other Lessees and including in particular all structural parts of the Estate*"

106. Also in carrying out the obligations Paragraph 9 of the Fifth Schedule requires the Tenant to give the Landlord access “*to enter upon the Premises for the purpose of executing repairs or alterations to or upon the Estate or such adjoining or neighbouring premises the Landlord or the persons so entering making good to the Tenant all damage thereby occasioned to the Premises.*”
107. The Tribunal is of the opinion that the Tenant’s obligation to pay *any* costs in repairing the structural parts of the Estate and the Landlord’s obligation to make good any damage caused to a Tenant’s property in carrying to those repairs makes the cost of the removal and replacement of the fixtures and fittings payable by the Tenants to the Landlord as a cost to the Service Charge.
108. The Tribunal went on to consider whether the Leaseholders would be liable to pay for damage caused by the contractor during removal and reinstatement of the fixtures and fittings. It took the view that this would be the responsibility of the contractor.
109. It further considered whether the Leaseholders would be liable under the Lease for the cost of a fixture or fitting were it to fail by reason of age or be so worn that it could not be reinstated. The Tribunal took the view that making good in this instance was to return the property to the same condition that it was before the work commenced and that the estimates were calculated on that basis. Therefore, any improvement would be a cost for the Leaseholder of Flat 2, 26 Manor Road. However, as the situation has not yet arisen the matter is speculative. If an agreement could not be reached, then an application could be made under section 27A of the 1985 Act to determine the reasonableness of the costs incurred. The present application is for a determination of the costs *to be* incurred.

Issue 2 - Compliance with the Consultation Procedure

110. The Tribunal considered the documents provided to support its submission that it had complied with consultation procedure under section 20 of the Landlord and Tenant Act 1985. In the absence of submissions and evidence to the contrary the Tribunal finds that the Applicant has complied with the consultation requirements pursuant to section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

Issue 3 – Reasonableness of Service Charges

111. The Tribunal examined the estimates submitted by both C & L Preservation and Homeguard Damp and Timber Limited for the damp proofing work. It found that the works identified to be carried out by both contractors were essentially the same. Both reports identified the same areas of rising damp and the same treatment, namely chemical injection damp proof course and tanking. The work to be carried out is to:
Hack off plaster to a height of 1.0 metre (Homeguard Damp and Timber Limited recommend a higher level of plaster removal and re-plastering in certain areas).
Drill holes.

To carry out a chemical injection to BS 6576.
Re-plaster walls with appropriate additives.
Both provide a 20-year guarantee for the damp proofing.

112. The estimate of C & L Preservation of £1,750.00 is significantly lower than that of Homeguard Damp and Timber Limited of £3,154.00 although the amount of work is much the same. In the absence of evidence to the contrary the Tribunal finds that the cost of £1,750.00 to be incurred is reasonable.
113. The Tribunal examined the estimates submitted by Ed Braun of £2,330 plus VAT and RBT Plumbing & Heating £4,500 plus VAT for the removal and reinstatement of the kitchen and bathroom fixtures and fittings. The Tribunal found that the estimate of Ed Braun was itemised in detail. Both covered all the items to be removed and re-instated as listed in the Applicant's response to Leaseholder question 2 of the observations following Part 1 of the Consultation Procedure.
114. From considering the estimates it did not appear to the Tribunal that additional costs had been incurred as a result of the work being delayed as Ms Dobinson thought might be the case. In the Tribunal's knowledge and experience where a damp proof course has failed, remedial action, such as by a chemical injection system, does not become more extensive with time. The inclusion of re-plastering to a height of one metre is seen by most contractors as being required irrespective of the condition of the plaster at the time of the work. The need for tanking usually relates to the external ground level which may or may not be something which can be altered. In most cases the main reason initially for the need to damp proof is the living conditions within residential accommodation. However, over time damage to the structure may occur, although there is no evidence to suggest this has happened to the Property yet.
115. The estimate of Ed Braun of £2,330 plus VAT is significantly lower than that of RBT Plumbing & Heating £4,500 plus VAT although the amount of work is much the same. In the absence of evidence to the contrary the Tribunal finds that the cost of £2,330.00 to be incurred is reasonable.
116. This Application relates to the costs to be incurred. If when the work is completed the Respondents consider the work is not of a reasonable standard or cost e.g. the invoice did not reflect the work actually done, either party can apply under section 27A of the 1985 Act for a determination. However, it is always hoped that agreement can be reached.

Issue 4 - Section 20C & Issue 5 - Paragraph 5A of Schedule 11

117. The Applicants applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant. The Applicants also applied for an Order to reduce or extinguish the Applicants' liability to pay an administration charge in respect of litigation

costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

118. Leases may contain one or both provisions enabling a landlord to obtain their costs of proceedings. The difference between these two types of provisions was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258. The provision enabling the landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other lessees as part of the service charge. The provision enabling the landlord to claim its costs directly from the tenant might be seen as an individual liability, whereby the tenant alone bears the landlord's costs of the proceedings. Where the lease contains these provisions, the costs of the proceedings could be claimed by the Respondent under either Lease provision but not both.
119. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicant.
120. The Tribunal examined the Lease and found the only provision which might relate to these costs being claimed through the Service Charge is paragraph 8 of the Seventh Schedule which is a general provision for the recovery of the costs of management of the Property. The Tribunal is of the opinion that costs relating to "management of the property" do not include the costs incurred in taking or defending proceedings.
121. With regard to claiming these costs directly from the Applicant the Tribunal found that the only provision was contained in Paragraph 21 of the Fifth Schedule which states "to pay all costs charges and expenses (including Solicitor's costs and Surveyor's fees) incurred by the Council for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court". The Tribunal is of the opinion that these proceedings are not "for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925" and therefore they cannot be claimed directly from the Applicant.
122. The Tribunal therefore finds that the Respondent cannot claim its costs under either the service charge or directly from the Applicant. Nevertheless, Tribunals are encouraged to make orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 if it is thought appropriate, as the judicial body hearing the matter at first instance.
123. Therefore, the second issue is whether an Order should be made under the respective legislative provisions. In deciding whether or not it is just and equitable in the circumstances to grant an order under either legislative provisions the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.

124. With regard to the conduct of the parties, the Tribunal considered that both parties had acted reasonably.
125. With regard to the outcome the Tribunal has found in favour of the Applicant. However, the question that precipitated the proceedings was whether the cost of the removal and replacement of the fixtures and fittings is payable under the Service Charge. This required an interpretation of the Lease and the points raised by the Respondents in their submissions were based on understandable concerns. The Tribunal is of the opinion that the particular issue would not have been settled without the application to the Tribunal. The determination, although contrary to what the Respondents may have wished is of benefit to both parties in bringing certainty and the effect of making an order is that the parties pay their own costs.
126. Therefore, the Tribunal is satisfied it is just and equitable to make:
 - (1) an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable.
 - (2) an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

2. Section 18 Landlord and Tenant Act 1985
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period

3. Section 19 Landlord and Tenant Act 1985
 - (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 provision 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.

4. Section 20B Limitation of Service Charges: time limit on making demands
 - (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
 - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Section 21B Notice to accompany demands for service charges
 - (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
 - (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
 - (3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.
 - (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
 - (5) Regulations under subsection (2) may make different provision for different purposes.
 - (6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Landlord and Tenant Act 1985
 - (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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

7. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
8. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 2 parts and 4 stages as follows:

Part 1

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

Part 2

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

9. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - b) to obtain estimates for proposed works or agreements,
 - c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) and (7)... not relevant to this application.

10. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (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 First-tier 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 the 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;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

11. Schedule 11 Commonhold and Leasehold Reform Act 2002

5 A Limitation of administration charges: costs of proceedings

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.