9270

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2013/0259**
Property	:	**2, Brecon House, Hallfield Estate, London W2 6EF**
Applicant	:	**The Lord Mayor & Citizens of the City of Westminster**
Representative	:	**Judge & Priestley, Solicitors**
Respondent	:	**(1) Mr Marshall DeSouza** **(2) Mrs Joanna DeSouza**
Representative	:	**In Person**
Appearances for the Applicant		**Ms K. Hallett (of Counsel)** **Mr Nick Humphries** **(Project & Contract Manager)**
Appearances for the Respondents		**First named Respondent in person**
Date of receipt of Transfer Order from County Court	:	**10th April 2013**
Pre Trial Review		**14th May 2013**
Date of Hearing		**15th August 2013**
Tribunal Members		**Tribunal Judge Shaw** **Mr T. Sennett MA FCIEH** **Mr J Francis**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**30th August 2013**

DECISION

Introduction

1. This case involves a matter transferred from the County Court by Order dated 28th March 2013, received by the Tribunal on 10th April 2013. The claim in the County Court involved a claim by the City of Westminster ("the Applicant") against Mr Marshall DeSouza and his wife Mrs Joanna DeSouza ("the Respondents") for alleged arrears of service charges in the sum of £10,495.23. The sum was claimed pursuant to provisions in the Respondent's lease dated 9th February 2004, and related to their proportionate contribution to the cost of the supply and installation of a new lift at the block of which their flat forms part. The Respondents are the leasehold owners of 2, Brecon House, W2 6EF ("the Property") which is a block situate on the Hallfield Estate, which in turn is part of the Applicant's housing stock. Having discovered the nature of the dispute, the County Court transferred the matter to this Tribunal, with a view to a determination being made, pursuant to the provisions of the Landlord & Tenant Act 1985 Section 27A ("the Act").

2. At the hearing of the matter, the Applicant was represented by Ms. K Hallett of Counsel. The Respondents appeared through the first named Respondent, Mr De Souza, who represented himself. Mr De Souza was assisted by a McKenzie Friend, namely Mr J. Howard. Ms Hallett, for the Applicant, was in attendance with Mr D. McCallion (a leasehold property officer). Ms Hallett also relied at the hearing upon

evidence given both in writing and orally by Mr Nick Humphries, a Project and Contract Manager employed by the Applicant.

3. At the inception of the hearing, the Tribunal heard an application made by the Respondent Mr DeSouza, to the effect that a witness statement within the hearing bundle made by Mr Humphries for the Applicant should not be allowed. In fact, the copy contained within the bundle is both unsigned and undated. A signed copy was in fact supplied to the Tribunal under cover of a letter dated 23rd July 2013, but even that statement was undated. It also does not contain the appropriate Statement of Truth.

4. Mr DeSouza made his application, to the effect that admission into the evidence of this statement and Mr Humphries' evidence generally should be disallowed, on the basis that Directions were given in this case on 14th May 2013 at a hearing which was attended on behalf of the Applicant. Paragraph 2 of those Directions required the Applicant to send a full and complete Statement of Case together with all relevant correspondence and documentation in support to the Respondents by the 28 May 2013. In fact Mr Humphries' statement was not with the documents then submitted and the first time Mr DeSouza saw this statement was when the bundle of documents was served on him on or about 22 July 2013. Even then the statement was unsigned, and it was not until three or four days later that he was served with a signed copy. Although he accepted that he had had the statement for about three

weeks, he said that he was prejudiced by the late service for the following reason. He had been pressing the Applicant for years to produce a breakdown of how they had calculated the cost of the works, a proportion of which was now claimed against him and his wife. They had consistently failed to provide such a breakdown, or to give him sight of documents enabling him to understand the costing. As a result, as part of his preparation for the contesting of this case, he had been compelled to go to an appropriately qualified engineer or lift specialist, namely Mr. Jason Whale, who is a sales manager for a lift company called Elevators Limited. The purpose of instructing Mr Whale had been to enable him to give a like for like quotation for the supply and installation of a lift similar to that in fact installed by the Applicant. However, never having received the breakdown information requested repeatedly by the Respondents of the Applicant, and never having received the original priced specification in respect of the lift installed, Mr Whale had been handicapped, and had had to give what he described as an *"educated comparison rather than an (sic) substantiated accurate comparison"*. His case was that the Applicant had had ample time to prepare for this hearing, and should have served Mr Humphries' evidence ideally with their original documents on 28 May 2013, and that this late service was in breach of the Tribunal's Directions.

5. Ms Hallett argued on behalf of the Applicant that in fact the direction at paragraph 2 of the Tribunal makes no specific reference to witness statements, although the Tribunal understood that in the usual scenario,

such documents would have been served at that stage. She accepted that it was unsatisfactory that the witness statement was only first served in the context of the provision of the bundle (which is generally simply a collation of the documents which have emerged during the earlier disclosure stage). However, she argued that the Respondents had not been significantly prejudiced because Mr Humphries does not in fact give in his witness statement the detailed specification and costing that Mr Whale would have needed in order to give a better estimate. In those circumstances the supply of the statement earlier would not have put Mr Whale in any superior position in making the necessary guess that had been required of him.

6. The Tribunal agreed with the Respondent that the late service of this statement, and indeed the incomplete nature of the statement, lacking as it did a date, verification of truth and initially even a signature, was very unsatisfactory. However, the Tribunal considered that it had to strike a balance between on the one hand disallowing that evidence in its entirety – which inevitably would have rendered the hearing somewhat artificial, and involved the hearing of one side's case only, with the fact that the statement was not particularly technical, and for the reasons Ms Hallett gave, may well have put Mr Whale in no better position even if he had had the statement at an earlier stage. Applying the overriding objective, the Tribunal decided that a fair hearing could nonetheless take place with the admission of this evidence giving Mr DeSouza such time during the hearing as he needed to consider the matter further. The

Tribunal considered that it would not really be possible to have a fair hearing without some evidence from the Applicant and that any adjournment of the hearing to enable any prejudice (which might have occurred) would have been disproportionate in all the circumstances. Accordingly the evidence of Mr Humphries was admitted.

Issues

7. There were several issues upon which the Tribunal was asked to make a finding. It is proposed to deal with these issues (which in fact total five in all) in order, and to give the Tribunal's findings on these issues in each case.

Were the costs reasonably incurred?

8. The Tribunal heard extensive evidence on this issue, which was disputed between the parties. No disrespect is intended to either side if the Tribunal attempts a summary rather than a complete recital of the respective evidence in this regard. The issue essentially was whether or not it was reasonable for the Applicant to replace the lift in question in its entirety, or whether it would have been appropriate and reasonable to carry out modernisation works only to the lift at a reduced cost. The Applicant's case essentially was that, for the reasons indicated in Ms Hallett's Skeleton Argument at paragraph 13, it was both reasonable and desirable to replace the lift in its entirety. It should be said that it was common ground between the parties that this was the first issue to be determined within the requirements of section 19 of the Act, in that

that section provides that the costs are recoverable only to the extent that they are reasonably incurred.

9. The Applicant relied heavily on two documents externally produced in support of its contention that it was reasonable for it to replace this lift in its entirety. The first was a report prepared by J. Bashford & Associates, an external specialist lift consultancy firm, which had prepared a report dated 23 March 2006. This report is exhibited to the Applicant's reply to the Respondents' Statement of Case and appears at page 111 to 115 in the hearing bundle. The report is not in fact signed by anyone, nor did the Tribunal hear any oral evidence to support the report. In fact, the report states that the lift was in "*medium condition*". It confirms that in terms of maintenance "*the on site log card has recently been renewed, therefore no previous records are available*". It lists some maintenance defects that which it was accepted in evidence were capable of being put right. It also states under the heading "Lift Breakdowns" that over the period of the previous 12 months, no breakdowns had been recorded on the lift log card, although that may not be accurate, for the reasons indicated above.

10. The report concludes in its summary that the lift in this case was installed in 1974 and that factory production of numerous component parts has now ceased and on that basis "*the majority of the equipment on this lift is now obsolete*". It states that although the performance of the equipment was adequate for the intended use and environment at

the time of installation, its now considered basic by comparison with modern lift design. It also states the opinion that the lift equipment currently installed is reaching the end of its economic working life and that as time progresses the levels of breakdowns as a result of the component failures will undoubtedly increase. The makers of the report therefore recommend that consideration be given to "*a comprehensive programme of modernisation by replacement*".

11. In the section dealing with budget costs at the end of the report, a figure of £75,000 to £80,000 is given based on March 2006 prices for the cost of comprehensive modernisation (in fact replacement of the lift as understood by the Tribunal).

12. The other document relied upon by the Applicant is a report of which the Tribunal appears to have been supplied with an extract, carried out by a firm of quantity surveyors called Faithful & Gould. That report, as understood by the Tribunal, was obtained as a check on whether or not the price given by the contractors who actually supplied and installed this lift (namely the company known as PTERS Key Lifts Limited (pursuant to a long term qualifying agreement) was actually a fair price. That report gives some data results of a fairly technical kind judging the price by reference to cost per stop and cost per linear metre, and arrives at the conclusion that the lessees are achieving value for money from this method of procurement for the replacement of the lift in Brecon House. This report perhaps goes more to the question of cost than the question

of the decision in principle as to whether or not the lift should be replaced.

13. The Respondent pointed out that there was no significant complaint registered by users of the pre-existing lift and that it was running reasonably. So far as he was concerned, there was no reason to replace the lift in its entirety. Spare parts were available and these days it is perfectly possible to have fabricated a part, even if the lift is no longer being produced and ready supply is unavailable. It essentially seemed to the Respondent that this was unnecessary expenditure, particularly from his point of view and that of his wife, since they own and occupy a flat on the ground floor of the block in question.

14. The Tribunal has spent some time considering whether or not the Applicant was justified within the Act with replacing this lift rather than effectively repairing it as and when repair was required. The case for replacement was not especially well made out by the Applicant because it produced no attendance or repairs record suggesting that the existing lift was malfunctioning to a degree that was unacceptable. Indeed, the only evidence produced emanated from enquiries made by the Respondent himself. At page 135S in the bundle is a document which he obtained showing the call out rate in respect of the lift for the years spanning 2008 to 2012. Putting the matter shortly, the call outs were not out of keeping with what Mr Humphries said would be acceptable (approximately a couple of call outs every quarter) and there was no

substantial difference in the number of call outs after the installation of the new lift as opposed to prior to the new lift being installed. It is however right to say that some of the call outs appear to have resolved themselves by the time the engineers attended after the new lift had been installed.

15. Nor was there any evidence to suggest that there had been long delays between orders of replacement parts and the acquisition of those parts when needed. Yet further, there was no evidence called on behalf of the Applicant that any leaseholders had been complaining about the function of the lift prior to the decision to go ahead and replace it.

16. The Tribunal therefore did not find the decision in this regard an easy one to make. Ultimately the Tribunal has decided that, for the purposes of the Act, the Applicant cannot be said to have been unreasonable in making the decision that it did. The Tribunal is mindful of the fact that what is reasonable may not always involve the cheapest course for the purposes of those paying for the costs. However, the Tribunal has been persuaded that this is a case in which it was not unreasonable to replace a 1974 lift. It is fair to say, it seems to the Tribunal, that the acquisition of replacement component parts will only become more difficult as the years progress. Although current Health & Safety Regulations are not of application to this lift since it was installed prior to the making of such Regulations, it is not unreasonable to want the lift to comply with modern standards of safety and performance. It is also right to observe that the

fact that the lift was working satisfactorily in 2008 may have been no guarantee that increasing problems would have occurred with the lift over subsequent years. Sometimes it is worth making a significant capital outlay in order to reduce subsequent running costs and increase overall efficiency. The Tribunal would have been more greatly assisted by the Applicant had it in fact produced some kind of cost benefit analysis which had been carried out, but none was supplied. On balance, nonetheless, the Tribunal has decided that the Applicant had reasonable grounds for replacing this lift rather than continuing to repair it, and that it cannot be criticised within the meaning of the Act for making the decision that it did. Accordingly, this first issue between the parties is determined in favour of the Applicant.

Were the costs incurred reasonable?

17. As has been mentioned above, the Applicant's case was that it had these works carried out pursuant to a qualifying long term agreement with the company called PTERS Key Lifts Limited. Its case was that the overall cost was reasonable and that it amounted to £125,947.77 of which the Respondents' proportion was 8.333%. This is how the figure of £10,495.23 has been computed.

18. The Applicant attended at the hearing with minimal documentary evidence to support this costing in the view of the Tribunal. The initial Statement of Case did not more than to produce the demand in this sum made of the Respondents and exhibited as DM3 at p.48 in the bundle.

The Respondents challenged the reasonableness of the cost, and this produced a reply to the Respondent's Statement of Case which in turn produced the report carried out by J. Bashford & Associates referred to above and exhibited at DM4 to the Respondent' Reply. As has already been observed, that makes no particular reference to the costs in fact now charged, but does say that budget costs submitted are based on market prices as at March 2006, and that the comprehensive modernisation which the Tribunal takes to be replacement, should be assessed at £75-80,000. The subsequent evidence referred to by Mr Humphries is in the form of the document produced by Faithful & Gould, again referred to above, but does not make any specific reference to the amount in fact charged, and of course was produced in October 2008 rather than addressing the actual costs in this case.

19. The chronology helpfully prepared by Ms Hallett on behalf of the Applicant, confirms that the works in this case were in fact commenced some time after that document was produced, that is to say April 2009 and the works were not finished until February 2010, the final bill was not presented to the Respondents until the 21st November 2011. The analysis of the cost in the Faithfull & Gould document states (see p.142 of the bundle) that "*The builders work elements, however, are slightly higher than we would expect but it is acknowledged that these works are carried out by building contractors that are specialised within the lift market place and are familiar with working around lifts and the type of work required, therefore it is our opinion that works would be at a*

premium to "general building costs"." The Tribunal asked for the breakdown of the costs so that the building costs could be ascertained in this case. Surprisingly, the Applicant had come to the hearing without previously having supplied to the Respondents, or exhibited to its written evidence, any breakdown of these costs. In oral evidence to the Tribunal, Mr Humphries told the Tribunal that the building cost he would have expected would have been in accordance with his written statement as referred to below.

20. In his written evidence, as confirmed to the Tribunal orally, at paragraph 8 Mr Humphries states (see page 138 of the hearing bundle) that

> *"Under the contract we agreed with the contractor that the installation time per lift would take 400 hours at £35 per hour (this rate is for a pair of workmen). If the installation took less time, the council would benefit from the cost saving. But PTERS were burdened with the risk that if the installation took longer than 400 hours, they absorbed the extra cost. This aspect of the contract was closely monitored through timesheets. The actual installation time exceeded on all the lifts and by up to 80 hours in some cases. Savings were also achieved on building works with the result that the final account was below the contracted sum."*

21. As has already been indicated, part of the information repeatedly requested of the Applicant by the Respondents has been, together with a specification of the lift, a breakdown of the costs. Usually this would have been supplied in the form of the completed specification supplied by the contractors. The other document, to which reference will be made below, is the long time qualifying agreement applying to PTERS. That has never been supplied to the Respondents, nor on the Respondents' evidence, made available for viewing by them.

22. At the hearing, Mr Humphries told the Tribunal that he did have some computerised internal information about the costing of the works. It transpired that this was in the form of a document headed "Bill Input Sheet" dated 3 December 2010, and there was another document, again apparently internally produced with the heading "M802". The first of these documents has the costs of what the Tribunal was told were referable to this lift and has a figure of £21,796 marked as *"labour costs associated with replacement of lifts".* This figure is in conflict with the evidence contained by Mr Humphries in his witness statement that the labour cost would have been a maximum of 400 hours at £35 per hour. The figure as given by Mr Humphries in his statement would result in a labour cost of £14.000. This does not marry up with the cost given in the sheet he belatedly produced at the hearing of £21,796.60 and involves a difference of £7,796.60. Initially Mr Humphries was unable to supply an explanation for this disparity. Towards the end of the hearing, after some thought, he speculated to the Tribunal that the difference was referable to "*On-costs*" – in other words the Applicant's internal administrative costs. However there seems no reason why this would be included in a labour cost charge and the difference does not appear in the sum of £7,796.60 in either of the documents produced to the Tribunal.

23. It seems to the Tribunal that it should not be for either the Respondents or the Tribunal to have to struggle with lately produced and poorly copied

internally produced material from the Applicant. The Applicant has had ample time to set out in a witness statement with clearly intelligible supporting documentation how this job was costed, so as to provide the necessary information well in advance for both the Respondents and the Tribunal. The oral and documentary material produced by the Applicant is not easily made compatible and is, in the view of the Tribunal, unsatisfactory.

24. It is right that the Respondent himself obtains some evidence about the overall costing, as has already been referred to, but that was qualified by the gentleman concerned, namely Mr Whale, on the basis that without the specification (with which he was never supplied) his estimate was in the nature of guesswork only.

25. The Tribunal has to do the best that it can on the basis of the evidence supplied which, for the reasons indicated, is not satisfactory in this case. However, what is clear is that the Applicant was given a budget cost in 2006 as appears at p.115 in the bundle, which was to the effect that complete and comprehensive modernisation could be achieved for £75-80,000. The Tribunal has proceeded on the basis, as indicated to the Tribunal on behalf of the Applicant in the evidence, that that figure included bringing the system into compliance with modern legislation and disability improvements, coupled with whatever necessary tests were required. In other words, it amounted to the cost of replacement of the lift. That was the price budgeted by the independent assessor in

March 2006. Taking that as the base price, and allowing an inflationary uplift of 3% per annum to the time that these works were in fact commenced, would produce a figure in the sum of approximately £90,000. If one allows a further uplift of 10% to cover professional and other fees, a sum of £100,000 is achieved. It is this figure that the Tribunal determines on the basis of the evidence before it as being the reasonable cost of the works in this case. It is well accepted that this is a broad brush approach, but it is an approach which has been necessitated by the inadequate material supplied to the Tribunal by the Applicant in this case. The result of this would be that, subject to the Tribunal's findings on the other matters to which the Tribunal will now turn, the Respondent's contribution would be £8,333.

Has a fair and reasonable sum been calculated?

26. This question arose because the Respondents took two points against the Applicant in respect of the manner in which their contribution to these works has been calculated. The first point was that the Applicant has adopted a calculation of the proportion to be paid by the Respondents on the basis of a "*bed space*" allocation referable to the floor area of each bedroom. As indicated in the Applicant's Statement of Case, Brecon House comprises 22 flats with a total of 72 bed spaces. The Respondents' flat has 6 bed spaces within the block. On this basis, the lease share is 8.333% being 6 as a fraction of 72. The Respondent's challenge this calculation on the basis that it produces an inequitable result. They say that, in effect, their flat does not have twice the bed

space of the flats above. It was not entirely clear from the Respondents' evidence what percentage or fraction they suggested should be substituted for that achieved by the Applicant. As understood by the Tribunal, an argument was put forward by Mr DeSouza on the basis that the sharing of the cost should be equal as between the 22 flats within the block, thus substantially reducing their percentage contribution. They said that the flat owned by them was not significantly different in floor area from the flat or flats above because there was some significant space taken up on the ground floor by storage rooms in and around the area of the lift and by the entrance hall area.

27. The obligation of the Applicant as landlords in this case is to calculate a level of contribution in accordance with the terms of the lease and the Act. By virtue of the lease, the Respondents' contribution has to be a *"fair and reasonable proportion (as determined by the lessor)"*, - see clause 3A of the lease at p.4 in Tab 2 of the bundle. This is an approach consistent with the Act also. Ms Hallett has set out in her Skeleton Argument the reason for the bed space calculation being adopted. This method has already been considered in other cases before the Tribunal, specifically ***Stephens v. West Homes Limited LON/00BK/LSC/2011/0289***. It is an approach used by numerous other social landlords and in this particular case it appears that the floor area of the subject flat is, if not exactly then very nearly, twice the floor area of the flats above. In other words, there are two ground floor flats which

are bigger by almost double than the flats on the other floors in the block.

28. The method adopted by the Applicant does not have to be precise, for the purposes of either the Act or the lease. It has to be fair and reasonable. It so happens in this case that if a floor area approach were taken, it would produce a not dissimilar result. For this reason and for the other reasons advanced in the Applicant's Skeleton Argument which seem to the Tribunal to be logical and sustainable, and for the reasons given in the previous decision to which reference has been made, the Tribunal finds for the Applicant in respect of this part of the issue.

29. The other point taken by the Respondent can be shortly dealt with. His argument was that the fact that his flat was on the ground floor was a compelling reason for reducing the percentage to be paid, since he gains little or no use from the lift. This is an argument understandably and frequently put forward by parties representing themselves before the Tribunal. Sadly from the point of view of the Respondents, it has no force because their obligations are as contained within their lease which makes no provision for a reduction to be made referable to the degree of use obtained by any particular flat from services provided. Nor does it seem to be to the Tribunal a matter properly to be taken into account within the criteria contained within the Act. To do otherwise would mean that there would be such uncertainty in the service charge provisions, and such subjectivity, as to make them difficult to operate. Essentially

because there is no support for the Respondents for such a construction in his lease, this argument is also determined in favour of the Applicant.

Was Section 20 complied with?

30. The Applicant's case was that it was not required to obtain competitive tenders in this case because the work was carried out in accordance with a qualifying long term agreement. The Act does not require competitive tenders to be obtained in such circumstances although there is a form of Section 20 consultation which is nonetheless required. This, argued the Applicant, had been complied with by serving the appropriate notices and having regard to such observations as they received. The Respondents argued that they had sent a letter to the Applicant which had never been properly considered. Moreover, although a meeting was held for the leaseholders to express their views, this meeting descended into chaos with disagreement within the leaseholders themselves about essentially the payment options rather than the carrying out of the works and Mr DeSouza had not been able to make his voice heard. Mr DeSouza had an enduring feeling, that he had been essentially dismissed by the Applicant, almost with some degree of contempt, throughout and that his voice had not at any stage been listened to. Indeed he told the Tribunal that on one occasion when he had phoned the Applicant's offices he had been told by the member of staff dealing with him "*Why don't you just pay like everybody else?*".

31. By letter dated 24 January 2009 appearing at p.88 in the hearing bundle, the Respondent wrote to Mr Humphries observing that he considered the price to be excessive and requesting a complete breakdown of the price for the lift installation. He also said that he failed to understand why the lift could not be repaired rather than replaced. Moreover, he questioned why no other quotations had been obtained, other than that from PTERS Key Lifts Limited. His evidence was that he never received a reply to that letter. The evidence from the Applicant was consistent with that, in that Mr Humphries said that he never received that letter. It is difficult for the Tribunal to make any firm finding on this matter because it had no reason to dispute the integrity of either of the witnesses in this regard. Perhaps all that can be said is that even had Mr DeSouza's evidence been received, it was more in the nature of a request for information than anything else and these requests were repeated (but not replied to) in other correspondence too. The Applicant's evidence is that it did pursue other correspondence with him, although not to the satisfaction of the Respondents.

32. The essential allegation is that regard was not had to the Respondent's comments. This is always a difficult allegation with which to deal, because it is possible to have regard, but not to follow the recommendations contained in any such comments. It seems unlikely to the Tribunal that the representation, phrased as it was, would have had any significant impact upon the policy of the Applicant and that some regard was had to other similar correspondence later in the exchanges

between the parties, which chain of correspondence was carefully followed by Ms Hallett in the course of closing submissions. There is no doubt in the view of the Tribunal that the Respondent will always nurse the feeling that his voice was not heard in this matter. The evidence as to whether or not the statutory obligation was complied with is limited and the Tribunal does not feel that the burden of the evidence is so weighty that it can make a finding against the Applicant in this case. It is satisfied that the relevant notices were served and that a meeting was held for the benefit of leaseholders in order for representations to be made by them and that in all significant respects, the statutory procedure was complied with. No finding is made against the Applicant in this regard.

Were the works carried out to a reasonable standard?

33. The Respondents made a number of allegations about the quality of the works, several of which allegations were supported by photographic evidence before the Tribunal. It is not proposed to go through these matters on an individual basis because the complaints in the main did not seem to the Tribunal to be of a particularly weighty kind with one exception. In one of the photographs it is clear that part of the flooring of the lift has been left unfinished. This matter, when put to Mr Humphries, was candidly conceded by him and he told the Tribunal that he had been unaware of this state of finish and that it would be dealt with without delay. Quite why, given that Mr Humphries signed the works off as being completed, he had not appreciated this previously was unclear,

the Tribunal is satisfied that he will follow through on behalf of the Applicant with his undertaking to ensure that that part of the work is indeed completed and is completed without any extra cost, either to the Respondents or any other leaseholders in the block. The work concerned can be seen illustrated in photograph F at p.135R of the bundle. On the basis of that undertaking to the Tribunal, the Tribunal makes no further findings in respect of the allegations of poor workmanship.

Conclusion

34. For the reasons indicated above, the Tribunal is satisfied on the basis of the evidence before it that the costs in this case were reasonably incurred and that the reasonable level of costs is £100,000 overall, calculated as referred to above. It follows that the appropriate contribution from the Respondents at the rate of 8.333% (which the Tribunal finds is fair and reasonable within the meaning of the Act and the lease) is £8,333. It is this sum that the Tribunal finds to be reasonable and recoverable by the Applicant against the Respondents.

35. There are three further points that should be made in respect of this finding. The finding is restricted to the Respondents in this case and is not a general finding because it is based upon the evidence, inadequate as found by the Tribunal, put before the Tribunal in this particular case. It is specifically made on the basis of the evidence produced in this case and is not to be used for any general application in respect of the work in

relation to this block or any other blocks in respect of the Applicant's housing stock.

36. Two further comments which should be made in respect of the costs in this case. Initially the Applicant was seeking an order against the Respondents for certain fees and other costs incurred in these proceedings. In the event, sensibly, that was not pursued before the Tribunal. This is a case in which no section 20 application was relevant before the Tribunal because it is not an application made before the Tribunal; it is a case brought in the County Court, which has been transferred to the Tribunal for the purpose of determination of the reasonable costs only, which determination the Tribunal has made. However, it seems to the Tribunal that it may be helpful to the County Court, to which this case would have to be referred for any enforcement purposes or other determinations as to costs, for the Court to have some indication from the Tribunal which dealt with the matter, as to its impression on the reasonableness of the matter being contested.

37. It does seem to the Tribunal that it was indeed reasonable for the Respondents to have contested this claim. As has been stated on several occasions in the context of this decision, the basic primary information which they had repeatedly requested, that is to say a breakdown of the costs and a proper specification of the works, was never supplied to them, despite repeated requests. As was observed with some pain by Mr DeSouza during the course of the hearing, he had

discovered more about how the Applicant's case had been calculated in the context of the Tribunal hearing than he had previously discovered in 3 years of requests to the Applicant. The Applicant's case, although substantially successful before the Tribunal, has been reduced to some degree by reason of the inadequate material concerning the overall costs. It seems to the Tribunal that it would not be consistent with the justice of this case for further costs to be added to the Respondents' service charge account referable to a legitimate challenge to the Applicant's case.

38. The other matter upon which the Tribunal would make an observation is in respect of time to pay. There is no obligation on the Applicant to offer payment facilities to the Respondents in this case pursuant to the terms of the lease. Nonetheless as good social landlords, their case was that they had endeavoured to agree a payment plan, but that this had not been engaged with by the Respondents. The Respondent however argued that he could not sensibly engage until he had the information reasonably requested. The decision of the Upper Chamber in the case of **Garside v. RFYC Limited and BR Morder Taylor [2011] UKUT 367 (LC)** is support for the proposition that the financial impact of major works on lessees can be a material consideration when considering whether the costs are "*reasonably incurred*". Of course in this case the finding of the Tribunal has been that the costs were indeed reasonably incurred. However, a bill of nearly £9,000 is a colossal bill for former council tenants, now leaseholders, who have purchased pursuant to the

Right to Buy legislation, to meet in one payment. The Applicant may wish to reconsider whether some form of facility can be offered to the Respondents for the payment of this sum over a reasonable period of time.

Tribunal Judge: **S. Shaw**

Dated : **30th August 2013**