



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

Case Reference : CHI/00HN/LIS/2018/0065

Property : Viewpoint 7 & 9 Sandbourne Road
Bournemouth BH4 8JP

Applicant : Viewpoint Limited

Representative : Mrs Aileen Lacey-Payne of Napier
Management Services Limited

Respondent : The Lessees of Viewpoint

Representative : Not represented

Type of Application : Section 27A Landlord and Tenant Act 1985

Tribunal Members : Judge N P Jutton, Mr T E Dickinson BSc FRICS
and Mr M R Jenkinson

**Date and Venue of
Hearing** : 1 May 2019
Hallmark Hotel Bournemouth East Cliff East
Overcliff Drive Bournemouth BH1 3DN

Date of Decision : 10th May 2019

DECISION

1 **Introduction**

2. The Applicant seeks a determination under Section 27(3) of the Landlord and Tenant Act 1985 (the 1985 Act) that if it were to carry out certain works at the Property would the cost of such works be reasonably incurred and recoverable as part of the service charge.
3. The proposed works can be broken down into four separate areas. They are:
 - i) Balcony weatherproofing/concrete repairs.
 - ii) Roof renewal and associated works.
 - iii) Brickwork repairs to include installation of vertical and horizontal movement joints to external brickwork.
 - iv) Renewal of tanks and fans.
4. Directions were made by the Tribunal on the 11 December 2018. They provided for service by the Applicant and by the Respondents of statements of case together with supporting documents and for the preparation of a hearing bundle of documents.
5. At the hearing the Applicant was represented by Mrs Aileen Lacey-Payne of the Applicant's managing agents Napier Management Services Limited. Also present at the hearing were:

Lesley Cook (Flat 32)
Dean Quinton of the managing agents Napiers
Roger and Janet Greenwood (Flat 4)
Patrick Cauldwell (Flat 62)
Mr B Appel (Flat 3)
Mr & Mrs Brian Hill (Flat 37)
Christian Loehry (Flat 63)
Richard Phillips (Flat 35)
Jane Robinson (Flat 8)
Darren Hazell (Flat 11)
Jean Mirfield (Flat 51)
Brenda Maddy of the managing agents Napiers
Andy Roberts (Flat 45)
Frank Groome on behalf of Keith Brown (Flat 48)

6. **Documents**

7. The documents before the Tribunal comprised a bundle of documents (the main bundle) together with an addendum bundle. They included the application, the directions, statements of case, copy Lease for Flat 33, reports from experts including surveyors and structural engineers, notices served pursuant to Section 20 of the 1985 Act and observations thereon, specifications of works, tenders received from contractors and other

documents. References to page numbers in this decision are references to page numbers in the main bundle. References to documents in the addendum bundle are annotated 'AB'. The Tribunal also received a skeleton argument on behalf of Keith Brown of flat 48.

8. **The Inspection**

9. The Tribunal inspected the property on the morning of 1st May 2019.
10. Viewpoint comprises two separate blocks of residential flats (which were described during the hearing as the South Block and the North Block) understood to have been built in the early 1970s. They are each seven storeys high. They are understood to have reinforced concrete structural frames with concrete floor slabs at each storey with external cavity walls formed with masonry and facing brick on the external skin. They have flat felted roofs. During its inspection the Tribunal viewed the balconies / interiors of Flats 35, 37 and 62. There was significant internal cracking to the internal walls of Flat 37. Looking from a window of Flat 37 (and from the roof) could be seen evidence of bulging to the brickwork of the external walls. The Tribunal also inspected the flat roof to the South Block and were shown areas from which core samples had been taken. It also inspected two galvanised water tanks and housing for roof fans.

11. **The Law**

12. The relevant statutory provisions are to be found in Sections 18, 19 and 27a of the 1985 Act. They provide as follows:

The 1985 Act

- 18 (1) *In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
- (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs.*
- (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
- (3) *For this purpose –*
- (a) *“costs” includes overheads, and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*
- 19 (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*
- (a) *only to the extent that they are reasonably incurred, and*

- (b) *where they are incurred on the 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*

27A (1) ...

(2) ...

- (3) *An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –*

- (a) *the person by whom it would be payable,*
- (b) *the person to whom it would be payable,*
- (c) *the amount which would be payable,*
- (d) *the date at or by which it would be payable, and*
- (e) *the manner in which it would be payable.*

- (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*

- (a) *has been agreed or admitted by the tenant,*
- (b) *has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,*
- (c) *has been the subject of determination by a court, or*
- (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

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

13. **The Lease**

14. A copy of the Lease of Flat 33 at the Property appears at pages 6 – 22 and it is assumed that all Leases at the Property are in the same form

15. The Applicant's repairing obligations are set out in the Sixth Schedule. Clause 2 of the Sixth Schedule provides as follows:

“(2) *To maintain and keep in good and substantial repair and condition and (where necessary) renew:*

- (a) *the main structure of the Building and the Estate including the principle internal girders and exterior walls and balconies and the foundations and the roofs thereof with their main water tanks main drains gutters and rainwater pipes (other than those included in this demise or in the demise of any other flat in the Building)*

(b) all such gas and water mains and pipes drains waste water and sewerage ducts and electric cables and wires as made by virtue of the terms of this Lease be enjoyed or used by the Tenant in common with the owners or Lessees of other flats in the Building.

.....

16. By Clause 4 of the Lease the Lessee covenants to pay to the Applicant by way of a service charge a share of the costs incurred or to be incurred by the Applicant in fulfilling its service obligations as set out in Schedule Six of the Lease.
17. At the hearing it was agreed with the parties that there were four areas of proposed works at the property which fell to be addressed by the Tribunal (as identified above). It was agreed to address each area of work in turn. They can be conveniently referred to under headings of:
 1. Works to balconies
 2. Works to the walls/brickwork
 3. Works to the roof
 4. Works to the tanks and fans.

18. Balconies

19. Mrs Lacey-Payne explained that the original application to the Tribunal in respect of waterproofing to the balconies was no longer proceeding. There was no specification for the works as yet nor had the Applicant begun the Section 20 consultation process. Mrs Lacey-Payne said that she had recently written to the Applicant's insurers in relation to the proposed works and she was waiting to receive a response from them.
20. In the circumstances it was agreed that there was insufficient information before the Tribunal for the Tribunal to make a determination in respect of proposed works to the balconies. In the circumstances the Tribunal agreed to stay that part of the application for a period of six months. That there would be liberty to apply for either party to restore the application within six months but if it wasn't restored within six months the application would be dismissed.

21. Walls / Brickwork

22. The Applicants' Case

Mrs Lacey-Payne said that when the current managing agents (Napiers) had taken over the management of the property they had been instructed to put together a five year plan which, amongst other things, would address works required to the walls and brickwork. A structural engineer Richard Elliott of R Elliott Associates Limited had been instructed to report (85 to 96). Subsequently a surveyor Simon Welch BSc MRICS of Winkle-Bottom Limited had prepared a specification for the works (97 – 122). A notice had been served on the Lessees

pursuant to Section 20 of the 1985 Act on 11 December 2018 (81 – 82). Observations had been received from certain Lessees (eg. 122a) and tenders received from contractors. A tender report in respect of tenders received had been produced by Simon Welch (5–16AB) dated 22 March 2019. A second notice pursuant to the consultation process required by Section 20 of the 1985 Act had yet to be served.

23. Mrs Lacey-Payne said that it had been made clear in replies to observations received from Lessees (eg. 122a) that the works set out in the specification included “associated works”. That would cover work to repair brickwork and damaged masonry. The works as described in the schedule of works (114) included work to horizontal and vertical movement joints and the removal and reinstatement of brickwork. Mrs Lacey-Payne understood that would include works to reinstate affected brickwork to both blocks. As set out in the response to observations (112a-j) the structural engineer retained by the Applicant had advised that every elevation be examined and if certain works were, in the event, not required because inter alia of earlier works carried out then they would be removed from the contract. The specification, Mrs Lacey-Payne said had been prepared under a worst case scenario so that if works set out in the specification were found not to be required then they wouldn’t be carried out. There was however a contingency sum in the specification which was shown in the Tender analysis (13AB) of £15,000. Mrs Lacey-Payne said that the aim was to avoid overspend. That the specification had been drawn to cover all eventualities as far as possible. If in the event work was not required it wouldn’t be carried out and there would be a saving. In answer to questions from the Tribunal Mrs Lacey-Payne said that the reference to Brexit uncertainty in the Tender Report (11AB), as she understood it, related to a small risk of an over-run on material costs. Mrs Lacey-Payne explained that scaffolding (the anticipated cost of which is in the Tender analysis (13AB)) would not be on the elevations which contained the balconies.

24. The Respondent’s Case

25. Mr Hill Flat 37.

Mr Hill said that work had been carried out to the southern block in 2007. He described this as phase one. He was concerned that the Applicant had changed surveyors from one Tom Green to Simon Welch and that as such there was a lack of continuity of surveyors. He made reference to what he described as a ‘combined specification’ which he said had been presented in June 2018 to cover all four areas of work. He accepted on being questioned by the Tribunal that the Applicant was not proceeding with that combined specification and that it was not the subject of the application before the Tribunal.

26. Mr Hill said that he accepted the findings of Mr Elliott, the structural engineer, but was surprised at what he said were certain omissions from Mr Elliott’s report.

27. Mr Hill said that the new specification which related to work to vertical and horizontal movement joints was received in December 2018 and he had submitted his observations on it in January 2019. He was concerned that the specification did not reference previous works carried out. He was particularly concerned, understandably, that he felt the specification did not include works to the walls of his flat where there were clearly problems with movement and cracking. Mr Hill said that he didn't have confidence in Simon Welch.
28. Mr Hill said that he understood that the specification had been prepared on the basis that this was a 'clean building'. That is on the basis that the walls were not damaged. However there was known damage and that should he believed be referred to in the specification. That therefore the specification should be revised and resubmitted and a new consultation process begun. He was concerned that the surveyor's Tender Report did not make reference to asbestos removal notwithstanding the fact that it was known that asbestos was present in the building. He had no objection, per se, to a contingency sum but submitted that that shouldn't be within the contract with the chosen contractor because that was an invitation to the contractor to spend those monies. It should be kept back as a budget figure.
- 29. Mr Phillips Flat 35**
30. Mr Phillips said that from the paperwork he believed that there were two key issues that should be addressed. Firstly that account be taken very precisely as to what repairs had been undertaken historically. Only thereafter could the appropriate remedial action be addressed. Secondly there was the question as to whether new expansion movement joints should be installed before remedial works to the walls or after. That was he said a matter which should be addressed to the structural engineer Mr Elliott and Mr Elliott's recommendations followed.
- 31. Mr Groome (on behalf of Mr Keith Brown of Flat 48)**
32. Mr Groome said that there had been historical works carried out to one block in 2012 and another block in 2012 and 2017. He said there was a concern that that historic work had not been done properly. That full account should be taken as to whether expansion joints had been incorporated into the previous repairs and if so it shouldn't be necessary to do that work again. That proper regard should be taken of Mr Hill's concerns as to whether expansion joints should be fitted to some of the walls before or after remedial repairs had been carried out. Mr Groome made the point that the Tender Analysis at 13AB referred only to supply and fitting of vertical movement joints and there was no reference to horizontal movement joints.
- 33. Mr Cauldwell Flat 62**
34. Mr Cauldwell said that consideration should be given to previous work had been carried out in 2015/16. He was concerned that the surveyor Tom Green had been replaced by Simon Welch who then in turn employed Mr Elliott the structural engineer who has advised of the need

to install vertical and horizontal joints to external brickwork even though Mr Cauldwell said that movement joints had been fitted previously when work was carried out on the north and west wall of Block C/D and the east wall of Block H/J.

35. Mr and Mrs Greenwood Flat 4

Mrs Greenwood said that based upon the information available there was a gap in the specification and wondered if there was a contingency sum. Mr Greenwood said that he was concerned about a cost overrun. He described the processes to date as “a bit of a mush” and “a money pit”. That the Section 20 consultation process had yet to be completed.

36. The Tribunal’s Decision

37. The issue for the Tribunal is that if the works proposed by the Applicant as set out in the specification (97 – 122) were carried out would the cost of those works be reasonably incurred and be recoverable from the Lessees under the terms of the individual Leases. From the evidence before it and its inspection of the Property the Tribunal is of the view that there is a degree of urgency for the work to be carried out, not least to rectify the serious problem manifested by internal cracking suffered for example by Mr and Mrs Hill in Flat 37. The Tribunal notes that the structural engineer Mr Elliott recommends at the end of his report of August 2018 at paragraph 5.10 that the programme of repair works should be put in hand “as soon as possible, to avoid further damage to the building” (96).
38. The Tribunal takes into account the fact that the repairs are to be carried out pursuant to a JCT Minor Works Building Contract. Further that the Schedule of Works does make reference to both horizontal and vertical movement joints. The Tribunal is satisfied from the specification and from the submissions made to it at the hearing that the proposed works (not least because they are stated to include “associated works”) will include any related works which become apparent during the course of the works to include the removal and reinstatement of brickwork where required and that regard will be had to works historically carried out. The Tribunal notes that sensibly there is provision for contingencies in the specification and accepts Mrs Lacey-Payne’s submission that the specification has been prepared on a worst case scenario so that in the event that once the building is opened up if it is found that certain works are not required they will not be carried out.
39. The proposed works remain subject to the completion of the consultation process as required by Section 20 of The 1985 Act and the parties are reminded of the need to complete that process and for the Applicant to have proper regard to observations submitted to it by Lessees.
40. In all of the circumstances the Tribunal is satisfied that if the proposed works as set out in the specification are carried out the cost incurred thereby (provided they are reasonable and the work is of a reasonable

standard) may be recovered by the Applicant from the Lessees as part of the service charge.

41. The Roof

42. The Applicant's Case

43. Mrs Lacey-Payne explained that in 2016 core samples were taken from the roofs of both blocks which indicated that the roofs were failing. A local roofer, Nick James, was asked to inspect. He also took core samples and confirmed that the roofs were failing. That further samples had been taken since. That some of the top floor flats had experienced the ingress of damp. There is a specification for the proposed works at pages 134 – 139. That is a specification for the renewal of the roofs. The first notice under the Section 20 consultation process had been served and observations received. Tenders had also been received and the surveyor Simon Welch had prepared a Tender Report (26 – 33AB).

44. All of the core samples taken, Mrs Lacey-Payne said, showed the insulation to be saturated. The proposal, as a matter of convenience and in particular to save costs, was to carry out the works to the roof at the same time as the works were carried out to the walls and brickwork so as to make use of the same scaffolding. Mrs Lacey-Payne understood that the roofs had last been replaced 20 years ago and each had a concrete deck. In answer to a question from the Tribunal with reference to the Tender Analysis prepared by the surveyor Mr Welch (33AB) Mrs Lacey-Payne agreed that the specification and the Tender Analysis showed a number of preparatory items designed to cover unforeseen issues which would only be known once the roof was opened up so again the approach was to err on the side of caution.

45. In answer to a question from the Tribunal Mrs Lacey-Payne said that if, instead of renewal, the roof was patched now but then had to be renewed in say three to four years' time there would be an additional substantial scaffolding cost although not quite as much as the scaffolding currently proposed as only one area would be worked on, ie. the roof, rather than different levels and heights of the walls. One of the problems Mrs Lacey-Payne suggested with just patching was knowing where to patch.

46. Mr Hill

47. Mr Hill said that in 2016 some local damage had been reported to the roofs and a survey had suggested that they were nearing the end of their design life. Although he had made observations in relation to the first Section 20 consultation notice he didn't feel that the Lessees as a whole had had sufficient opportunity to make observations. He said that he had asked the Applicant to include in the list of contractors a company called BMI Icopal and they had not been. That company, he said, were a member of the Intelligent Membrane Association. He felt that a contingency figure should not be included within the contract price because that was an invitation, in his view, for contractors to use it. It should just be a budget issue. He was concerned, he said, that he hadn't received historic reports on the roof that he had asked for. He did not

consider, on the information available at the current time, that it was necessary to renew or replace the roofs in their entirety. He felt that consideration should be given to local repairs being carried out by instructing the original roofing contractor.

48. In response to Mr Hill's submission that he had asked for BMI Icopal to be included in the list of contractors, Mrs Lacey-Payne confirmed that she had received correspondence from Mr Hill asking that consideration be given to that company but had not realised that was a nomination for that company to be approached. Mrs Lacey-Payne confirmed that a tender would be sent to BMI Icopal provided that they were roofing contractors.

49. Mr Loehry

50. Mr Loehry said that core samples had been taken on four or five occasions which all showed water ingress which together proved that the roof was failing.

51. Mr Groome

52. Mr Groome said that he understood that patchwork had been carried out to cure a leak that had been suffered by Flat 62 and that had been successful. He questioned therefore why couldn't patchwork repairs be carried out now and renewal of roofs deferred to a later date. Mr Groome in written submissions on behalf of Mr Brown states at paragraph 34 of those submissions (495) there was little doubt that the renewal of the felt lining and associated repairs were necessary and appropriate but Mr Brown had concerns about the estimated cost.

53. Mr Cauldwell

50. Mr Cauldwell felt that there should be more emphasis on ongoing roof repairs. He accepted that the lead flashing around the lift housing was failing and should be replaced and felt that it may be sufficient to do those repairs and to patch the roof. Historically when his flat, Flat 62, had suffered damp he had gone onto the roof and cleared rubbish from the roof and cleared out drains and that had been sufficient.

55. Mrs Cook

56. Mrs Cook said that she understood that additional core samples had been taken by BMI Icopal who had taken some seven samples from one block, four of which were wet and three were dry and five samples from the other block, two of which were wet. The two of which were wet were in positions where you would not normally expect failure. So it was difficult to predict where problems with the ingress of damp would be.

57. Mr Phillips

58. Mr Phillips said that he had taken some independent advice. He agreed that the lead flashings around the lift housing required replacing and

that repairs were certainly needed soon. He understood that beneath the roof cover was a concrete base on a metal skeleton. That skeleton he said rusts. That until the roof cover was removed it was impossible to be 100% sure what might be found. That there might be a lot more work required in relation to the metal skeleton. He was concerned about costs escalating and therefore felt that a very careful approach should be adopted. He asked why a quote had not been obtained just to carry out repairs as opposed to renewing and replacing the roof. He said that the advice which he had received was to only remove the roof covering and expose the roof if it was really necessary. In his written statement of case (405) Mr Phillips says that he believes that Mr Welch's recommendation to replace the roof was inappropriate. He was concerned that supporting rationale or a technical cost benefit analysis should be made available to the Lessees before a decision was made to replace the roofs in their entirety as opposed to repairing.

59. Mr Greenwood

60. Mr Greenwood said that he had some doubts over the surveyor's competence. He wondered whether the maintenance work carried out since 2016 might have invalidated the insurance. He felt that a 20 year lifespan for such a roof was too short and it should be more like 50 years.

61. The Tribunal's Decision

62. Clause 2 of the sixth schedule of the Lease provides that the Applicant will '*maintain and keep in good and substantial repair and condition and (where necessary) renew*' the main structure of the building including the roof. In the experience of the Tribunal as an expert Tribunal the lifespan of a roof of this nature is closer to 20 years rather than the 50 years suggested by Mr Greenwood. Given the results of core samples taken on several occasions in the view of the Tribunal it is reasonable to conclude that the roofs of both blocks are failing. Although it could be possible to proceed on the basis of ongoing patch repairs there could be no guarantee that that would be sufficient to stop the ingress of damp. Further, in the view of the Tribunal, it is a reasonable management decision to make use of the scaffold to be erected to do the repair works to the walls and brickwork and thus save further potentially substantial scaffolding costs in a few years' time.

63. The Tribunal notes that the specification for the works and the tenders received go into some detail as to works which may only be known once the roofs have been exposed. To that extent the tenders err on the side of caution. For example, the Tender Analysis at 33AB includes provisions for preparation of roof decks, a provisional sum and a contingency sum.

64. Upon the basis of the advice that the Applicants have received, the surveys carried out, the core samples taken and given their age it is reasonable to conclude that it is necessary to renew the roofs. In all circumstances having considered the evidence carefully and the submissions made by the parties the Tribunal is satisfied that if the proposed works are carried out to renew the roofs of both blocks in

accordance with the specification the costs incurred thereby (provided that they are reasonable and the work is of a reasonable standard) would be reasonably incurred. Again the parties are reminded of the importance of completing the section 20 consultation process and for proper regard to be had by the Applicant to observations received from Lessees.

65. Renewal of Tanks and Fans

66 The Applicant's Case

67. Mrs Lacey-Payne referred the Tribunal to reports obtained from a company called Worldwise Limited on the cold water storage tanks (169 – 174) and on the fans (175 – 180). Mrs Lacey-Payne said that when her company had originally taken over the management of the property they had inspected the tanks and fans and realised that there were issues to be addressed so had instructed a consulting engineer. On the basis of the engineer's report the specifications had been obtained. The engineer had made a presentation last July at the Applicant company's AGM where he reported that less than 50% of the fans were working and that the water tanks were in a very poor condition.
68. A specification running to some 200 pages had been produced and a Section 20 consultation process commenced which had now reached the stage of the second notice being sent out. Observations had been received from certain Lessees which had not been replied to yet.
69. Mrs Lacey-Payne said she understood that some Lessees were concerned that it was proposed not to replace the tanks on a like for like basis. The proposal was to replace the existing tanks with smaller tanks made of glass reinforced plastic (GRP) as opposed to galvanised steel. That the health and safety advice received was that smaller tanks reduced the risk of Legionella Disease which in her submission 'trumped' arguments that the tanks should be replaced on a like for like basis.
70. Mrs Lacey-Payne said that the work would be carried out under the terms of a JCT Minor Works 2016 contract which would address administration, payments terms etc. The works would be supervised by the consulting supervising engineer. Mrs Lacey-Payne confirmed that the Section 20 consultation process was continuing and that there would be proper regard to all observations received from Lessees. The process would include due diligence in respect of proposed contractors.
71. Mrs Lacey-Payne said the engineer's report in relation to the fans had concluded that the fans were in very poor condition. The engineer had opened up a couple of the fans and concluded that they were all well past their serviceable life. A large part of the costs of the works, Mrs Lacey-Payne said, was that of cranes. It made sense to address the replacement of the tanks and the fans at the same time. She said that there was a real concern that the tanks were not healthy and further because of the failure of fans some flats had no circulation. She believed that the existing fans fell far short of those required by current building standards. The fact

that the cold water tanks had stagnant water was dangerous from a health and safety perspective. The Applicant had considered lining the tanks but had been advised that there would be a very expensive and difficult process and not necessarily certain to work. The cost of craning tanks onto the roof, Mrs Lacey-Payne said, was at least £1,200 per day. That is why it made sense to do all of the works for the tanks and the fans at the same time. It also made sense to do the works to replace the tanks and the fans before the renewal of the roof. She believed the installation of new fans would also limit the need for certain of the duct work to be repaired.

72. Mr Phillips

73. Mr Phillips said it remained possible to replace the galvanised tanks with new galvanised tanks rather than GRP. In his view galvanised tanks had a longer life. He accepted that there were pro's and con's in respect of both galvanised and GRP tanks. There should be, he submitted in his statement of case, a proper comparative benefit cost analysis carried out (405).

74. Mr Hill

75. Mr Hill said he had historically requested copies of inspection reports and it had taken over a year for those to be received. There was, he felt, no substantial report from a consultant with a final solution. He had submitted observations in respect of the proposed works as part of the Section 20 consultation process. He believed that the lowest price tender received didn't include the full scope of the proposed works. Nor was there evidence of due diligence of the contractors. He felt that the contingency figure shown in the Tender Analysis should not be included in the contract price but should be part of the budget. He wondered whether the existing fans and motors could be refurbished rather than replaced. He awaited, Mr Hill said, responses to his observations at the end of the Section 20 process.

76. Mr Greenwood

77. Mr Greenwood said that the consultation was incomplete. He wondered what due diligence had been carried out in relation to the proposed contractors. He felt that there was a lack of governance and a lack of proper due diligence of contractors.

78. Mr Cauldwell

79. Mr Cauldwell said that in 2016 an estimate had been obtained to update the cold water tanks for £12,000. He felt that if £12,000 worth of works was carried out to the tanks that would be sufficient.

80. As to the fans Mr Cauldwell said that in each encasement enclosing the fans there were two fans. If one fan gave out it would switch to the other fan. These particular fans he understood were still being manufactured. He questioned the suggestion that 50% of the fans didn't work. He

accepted that on occasions hot water did overflow into the cold water tank making the water warm.

81. Mrs Mirfield

82. Mrs Mirfield said that she purchased her flat, Flat 51, last year and had had a survey carried out. The surveyor had commented on the poor state of the tanks and suggested that they needed replacing. She understood that some of the fan ducting had become horizontal and didn't work properly. The structure of the ducting needed to be addressed.

83. Mr Groome

84. Mr Groome said that he felt that a proper cost benefit analysis should be carried out on both the tanks and the fans before proceeding. That if it were the case that the original fans were still serviceable, even though they might require more maintenance, then there was an argument that it wasn't necessary under the terms of the Lease to replace them.

85. The Tribunal's Decision

86. The issue for the Tribunal is whether or not it is necessary to replace the tanks and the fans. More particularly as regards the tanks whether they should be replaced with smaller GRP tanks or replaced on a like for like basis. As to the fans whether they should be replaced or whether they remained serviceable and could be maintained. If the works carried out as proposed by the Applicant were completed whether the cost of those works would be reasonably incurred.

87. The cold water tanks are some 47 years old. The Tribunal inspected two of the tanks. There was evidence of them rusting. The Tribunal accepts that they constitute a health risk of Legionella Disease. In the view of the Tribunal the proposed replacement of the existing galvanised tanks with smaller tanks would reduce the health risk and the risk of flooding.

88. In the view of the Tribunal to replace galvanised tanks with more modern GRP tanks was reasonable and accepted current practice. The Tribunal accepts that there are arguments for and against galvanised tanks as opposed to GRP tanks. Galvanised tanks may have a longer life but they rust.

89. The Tribunal notes that Mrs Mirfield's relatively recent survey concluded that the tanks required replacing. In the view of the Tribunal lining the tanks would not be a reasonable, or indeed, sensible way of proceeding. Further that it made sense to replace the tanks and fans at the same time to make efficient use of the cost of craning.

90. In the view of the Tribunal the fact that up to 50% of the fans were failing at any given time was clearly indicative of them reaching the end of their serviceable life. On the basis of the evidence before it both in the reports in the bundle of documents and the submissions made by the parties at the hearing the Tribunal is satisfied that if the proposed works were carried out to replace the cold water tanks and the fans such works would

be reasonably incurred. That the costs of such works would be recoverable under the terms of the Lease from the Lessees as part of the service charge (provided those costs were reasonable and the work was carried out to a reasonable standard).

91. Again the Tribunal reminds the parties of the importance of completing the Section 20 consultation process and of the Applicant having proper and due regard and consideration to observations made by Lessees as part of that process.

92. Summary of Tribunal's Decision

93. If the works proposed by the Applicant to renew the roofs of the blocks and associated works, brickwork repairs to include the installation of vertical and horizontal movement joints to external brickwork and for the renewal of tanks and fans are carried out in accordance with the specifications produced by the Applicant then the costs thereby incurred by the Applicant (provided the costs are reasonable and the work of a reasonable standard) may be recovered by the Applicant from the Lessees as part of the service charge.
94. The Applicant's application in respect of proposed works to the balcony weatherproofing / concrete repairs is stayed for a period of six months from the date of this decision with liberty to either party to apply to restore that application within that six month period. If that application is not restored within the said six month period the application shall be dismissed without further order.

Dated this 10th day of May 2019

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to

appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

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