10075

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2014/0039**
Property	:	**Flat 10, Boughton House, Tennis Street, London SE1 1YF**
Applicant	:	**London Borough of Southwark**
Representative	:	**Ms E Bennett, Senior Enforcement Manager**
Respondent	:	**Ms M Davies**
Representative	:	**Mr N Proktor (leaseholder of Flat 20, Boughton House)**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Ms Davies (Respondent), Ms J Dawn (Applicant's Final Accounts Manager), Mr N Rice (Electrical Compliance Manager), (M&E Project Manager) and Mr W Martin (consultant to Applicant)**
Tribunal Members	:	**Judge P Korn (chairman)** **Mr J Barlow FRICS** **Mr J Francis**
Date and venue of Hearing	:	**20th May 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25th June 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that only 50% of the paint charges (being part of the external decorating charges) are payable and that therefore the Respondent's contribution to the paint charges is reduced by £167.32.

(2) The tribunal notes that the unpaid general service charge amount of £30.45 is agreed by the Respondent to be payable and that therefore the tribunal does not have jurisdiction to make a determination as to the payability of this sum.

(3) The tribunal determines that the remainder of the service charges and administration charges for the period covered by the county court claim are fully payable.

(4) The tribunal reserves its position as to the amount of interest payable under the Lease in respect of late payment of service charges, pending either (a) agreement between the parties or (b) receipt from the parties of further written submissions in accordance with the directions contained in paragraph 73 below to enable the tribunal to make a specific determination.

(5) No cost orders are made as no cost applications have been made.

(6) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or fees.

The application

1. The Applicant seeks, and following a transfer from the county court dated 25th January 2014, the tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to the Respondent and a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to the reasonableness and payability of certain administration charges.

2. The county court claim was for the following sums plus interest and county court costs:-

- External decorating charges £5,884.77
- Water cistern replacement costs £900.35
- Emergency lighting costs £326.27

- Other unpaid service charge amount £30.45

3. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 23rd May 2005 and was made between the Applicant (1) and the Respondent (2).

Agreed point

4. At a case management conference held on 4th March 2014 it was agreed that the service charge amount of £30.45 had been paid and was no longer in dispute. The issues for the tribunal to determine were therefore the payability of (a) the external decorating charges, (b) the water cistern replacement costs, (c) the emergency lighting costs and (d) the interest charged under the Lease.

Preliminary issue at hearing

5. At the start of the hearing Mr Proktor applied for certain additional information supplied by the Applicant to be struck out on the ground that the directions required that information to be submitted on 18th April 2014 but in fact (as conceded by the Applicant) it was submitted on 25th April 2014.

6. In response to a question from the tribunal Mr Proktor conceded that the Respondent had not been prejudiced by the late arrival of this information. In the circumstances, applying paragraphs 8 and 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Rules**") in the light of the overriding objective as set out in paragraph 3 of the Rules and in particular on the basis that the Respondent has not been prejudiced by the relatively minor breach of directions, the tribunal refused the application to strike out the additional information concerned. However, the tribunal added that the Applicant's failure strictly to comply with directions could properly be considered together with any other evidence regarding the conduct of the parties to the extent relevant, for example, in the context of any cost applications.

Respondent's case and Applicant's response on the disputed issues

Emergency lighting

7. Mr Proktor said that the Respondent's main issue with the emergency lighting costs was the Applicant's failure to provide a final breakdown. The Respondent's secondary concern was that she had not been given sufficient details of the works.

8. In response, Ms Bennett for the Applicant said that the reason why a final breakdown had not been provided was that the works were completed on 12th May 2013 and then there was a one year defects liability period. This had only just ended and the Applicant had not yet had an opportunity to put together a final breakdown. In any event, though, whilst the Applicant understood why the Respondent wanted a final breakdown her obligation to pay was not dependent on receiving a final breakdown. The Applicant was entitled to invoice her on the basis of the estimated cost and she was obliged under the Lease to pay these costs as long as they were reasonable.

9. Ms Bennett submitted that the costs were reasonable. The contract was competitively tendered and the Applicant had appointed the contractor who submitted the lowest price.

10. As regards the details of the works, Ms Bennett did not agree that insufficient detail had been provided and she referred the tribunal to the relevant documentation in the hearing bundle, in particular the summary of proposed works and costings prepared by E&E Building Services Ltd.

Water cistern replacement

11. The Respondent did not accept that the Applicant had complied with the section 20 consultation requirements in relation to these works. The Respondent had received a letter from Hertel dated 19th January 2008 stating that they had been awarded the contract to carry out the works and yet the Applicant's notice of intention to carry out those same works was dated 16th June 2008. It seemed, therefore, that the contractor had been appointed several months prior to the date on which the Applicant consulted with leaseholders and that the consultation took place after the decision had already been made, thereby rendering that consultation pointless and defective.

12. In response, Ms Bennett said that the initial notice of intention – inviting leaseholders to make observations on proposed framework agreements for repair and installation of water tanks – was dated 21st September 2004, which was prior to the date on which the Respondent became the leaseholder of the Property. Then on 17th May 2006 a further notice was sent to leaseholders by way of consultation on the tender evaluations for the proposed agreements. The purpose of the further notice dated 16th June 2008 was much more limited than suggested by Mr Proktor; by virtue of the consultation that had already taken place the choice of contractor had already been settled, and this further notice of intention merely invited observations on the details and estimated costs of the proposed works to be carried out by the nominated contractor.

13. Mr Proktor replied by stating that the Respondent had at no stage received the notice dated 17th May 2006. Ms Bennett in response said that she was not in a position categorically to prove that it was sent to a particular leaseholder as notices had not been sent by special delivery (or equivalent). However, she could confirm that the Applicant had received about 120 observations in response to this borough-wide notice and had no reason to believe that notices would have been sent to some leaseholders but not to others. In the alternative, Ms Bennett submitted that even if the Respondent did not receive the notice dated 17th May 2006 she did not suffer any prejudice as a result. On this specific point, Mr Proktor said that if the Respondent had received this notice she would have looked at the costs more carefully.

14. As regards the quality of the works, Mr Proktor said that they looked good and that the Respondent was not complaining about the quality of the works. The issue was with the cost, and the Respondent had found the breakdown of costs difficult to follow. In particular the Respondent was disputing the payability of the charges for overheads, profit percentage and the cost of preliminaries, although Mr Proktor did not specify the precise basis for disputing the payability of these sums save for his general statement that the Respondent did not feel that she had been provided with sufficient information.

15. On the specific issue of overheads Ms Bennett referred the tribunal to the Upper Tribunal case of *London Borough of Southwark v Gary Paul and others (2013) UKUT 0375*.

16. The Applicant had also covered overheads, profit percentage and preliminaries in written submissions, setting out its explanation of these items and stating that an explanation had also been provided to the Respondent in letters dated 19th June 2009 and 2nd March 2012.

Mr Martin's evidence on water cistern replacement works

17. Mr Martin confirmed the accuracy of his written witness statement, including the statement that he is a chartered quantity surveyor and the senior partner at the Potter Raper Partnership. He was commissioned to procure the water framework contract and to deal with the overall financial administration of it.

18. Mr Martin explained the reference to 'profit-sharing' in documentation relating to the framework agreement for these works. He felt that 'profit-sharing' was a misnomer and that it would be more accurate to refer to it as shared savings. The philosophy was to incentivise the contractor to find a cheaper way of doing the work (within the agreed specification) by splitting the benefit of any such savings between the Applicant and the contractor.

19. As regards the general process, Mr Martin confirmed that the Applicant analysed tenders on the basis of price in particular but also on quality. One advantage of entering into a framework agreement was that there was no need to spend time and money on going through a mini tendering process for each individual contract.

20. Mr Martin commented briefly on Mr Proktor's objections to overheads, profit percentage and the cost of preliminaries. The overheads were office costs and the profit element was 15% and he felt that the amounts were reasonable.

Ms Dawn's evidence on water cistern replacement works

21. Ms Dawn confirmed the accuracy of her written witness statement, including the statement that she is employed by the Applicant as the Final Accounts Manager.

22. Ms Dawn referred to the salient points in her witness statement, including her explanation as to the relationship between the framework agreement, the individual works charges and the relevant service charge provisions of the Lease. In particular she explained why, in her view, the notices sent out by the Applicant were sufficient to constitute compliance with the section 20 consultation requirements.

External decorating

23. Again, the Respondent did not accept that the Applicant had complied with the section 20 consultation requirements in relation to these works. A stage 2 notice of proposal was sent to leaseholders on 31st July 2007, but on the face of it the stage 1 notice of intention was sent out after the stage 2 notice. The notice was originally dated 14th December 2007 but a handwritten amendment had been made changing 14th December to 8th January. Although the year had not been amended Mr Proktor assumed that the intention was to amend the date to read 8th January 2008, which was after the date of the stage 2 notice which would render the consultation defective.

24. In response Ms Bennett referred the tribunal to a version of the same stage 1 notice in the hearing bundle containing a typed (and unamended) date of 8th January 2007. She also referred the tribunal to a copy signed statement of delivery in the hearing bundle dated 9th January 2007 stating that a notice relating to "Tabard Gardens External Decorations 2006/2007" was hand-delivered to the Property (amongst other properties) on 8th January 2007.

25. Mr Proktor also expressed concerns regarding the quality of the external decoration works, and he referred the tribunal to some copy photographs showing peeling paintwork on the underside of certain

walkways. About £15,000 had been charged for this work and in his view the Respondent should not have to pay anything for this sub-standard work, especially as a 15 year guarantee had been offered in respect of the work.

26. The Respondent was also objecting to paying for the cost of preliminaries, as no explanation had been given for these and no breakdown provided. There were also concerns regarding the extensions of time in relation to this work. Apollo Housing, the chosen contractor, had originally said that the works on the Respondent's block would take about 6 weeks. Then this was extended to 24 weeks and then there was a further 14 week extension.

27. The Respondent also had concerns regarding the scaffolding costs. The scaffolding was due to be taken down 15 months before it was in fact taken down. The Respondent was given assurances that she would not be charged more for scaffolding as a result, but the scaffolding costs were in fact increased from £49,000 to £53,000.

28. Finally, Mr Proktor asked the Applicant for clarification as to why the total measured works added up to £127,701.

29. The tribunal notes that a point was made by the Respondent in written submissions regarding the work to communal doors but that this point was not followed up or pursued at the hearing.

Mr Fletcher's evidence on external decoration works

30. Mr Fletcher confirmed the accuracy of his written witness statement, including the statement that he is employed by the Applicant as the Contract Manager for the Borough and Bankside Area.

31. Mr Fletcher accepted that a 15 year guarantee had been referred to in a meeting and also accepted that there had been some flaking of paint. He conceded that this might have been due to the contractor failing to apply the paint in the correct manner but he was not in a position to state the cause of the problem with any certainty. His assessment was that only about 20% of the paint was peeling. He did not have an explanation as to why the Applicant had not been more proactive in taking the issues up with the contractor.

Ms Phillips' evidence on external decoration works

32. Ms Phillips confirmed the accuracy of her written witness statement, including the statement that she is employed by the Applicant as a Project Manager for the Borough and Bankside and Walworth Areas and was responsible for overseeing this works contract.

33. As regards the challenge to preliminaries, she said that preliminaries covered the cost of running the job, site set-up etc. As regards the challenge to the extension of time, she said that in the end a lot of work was needed and the work proved to be more complex than initially anticipated.

Ms Dawn's evidence on external decoration works

34. Regarding scaffolding costs, Ms Dawn referred the tribunal to the Final Account and said that the estimated costs and the actual costs were the same. The reason why the amount payable by leaseholders had changed was simply that the proportion payable by leaseholders was calculated by reference to the amount attributable to the re-chargeable works, and the actual charge per leaseholder was higher than the estimated charge simply because some of the anticipated non re-chargeable works were not in fact carried out.

35. Regarding the calculation of the total measured works, this was the estimated total plus additions less omissions, and Ms Dawn took the tribunal and Mr Proktor through the figures.

Section 20B issue on external decoration works

36. Mr Proktor also submitted that the Applicant had failed to comply with section 20B of the 1985 Act in relation to the external decoration works. The costs were incurred on 30th October 2009 because the Applicant had produced a summary of costs which referred to the "Agreed Final Account as at 30/10/2009". However, the Applicant had neither made a demand for payment nor sent the Respondent a section 20B(2) notification until 17th November 2011 which was more than 18 months after the relevant costs were incurred.

37. In response, Ms Bennett said that the relevant costs were not incurred until the Applicant was invoiced for those costs. Whilst she did not have any evidence as to the precise date on which those costs were invoiced, she referred the tribunal to evidence in the hearing bundle – in the form of a printout covering the date of payment of various invoices – which indicated that the relevant invoice had been paid on 16th September 2011.

38. Ms Bennett also referred the tribunal to the reference to this issue in Ms Dawn's witness statement. In paragraph 22f of her witness statement she states that as the final account was less than the estimated invoice previously rendered to the Respondent no section 20B notification was actually needed and one was only sent on 17th November 2011 as a precautionary measure in case the final amount proved to be higher than the estimate. Her authority for this

proposition was the decision of Etherton J in *Gilje v Charlegrove Securities (2004) 1 All ER 91.*

General communication between parties

39. Mr Proktor referred the tribunal to various written requests made to the Applicant for information on behalf of the Respondent and others. Much of this is covered in a chronology on pages 37 to 40 of volume 1 of the hearing bundle. He also specifically referred the tribunal to an exchange of emails and letters during 2009 and 2010 in which he said that there was a pattern of requests for information, promises by the Applicant to provide the information, silence from the Applicant due to personnel changes and then demands for payment from employees of the Applicant with seemingly no knowledge of previous dealings.

40. Ms Bennett for the Applicant accepted that there had been some communication problems due to changes in personnel but submitted that on many occasions the Applicant had provided information in response to requests. In particular she referred the tribunal to Scott Thompson's letters dated 13th February, 25th February and 19th June 2009, Syan Armstrong's letters dated 23rd March and 31st March 2011 and Summer Field's letter dated 2nd March 2012.

Interest charges

41. Mr Proktor initially submitted that interest should only be payable from the date of the tribunal's decision. Ms Bennett for the Applicant said that the Applicant was entitled under the Lease to charge interest on any unpaid service from the due date until the date of payment.

42. In further directions the tribunal ordered the Applicant to provide details of its interest calculations by way of further written submissions and invited the Respondent to make written observations on those calculations if she wished to do so. The Applicant accordingly has made written submissions on the point and the Respondent has made written observations on the Applicant's submissions.

43. In further written submissions the Applicant has set out its interest calculations on the basis that interest is due from the date of invoice up to the date on which proceedings were issued at a rate of 5% above base rate which itself currently stands at 0.5%.

44. In response, the Respondent has not disputed the formula applied by the Applicant but has disputed the figures on the basis that she does not agree with the Applicant's starting dates for its interest calculations. In particular she has submitted that the service charges were on hold until final accounts had been issued. In this regard, the Respondent has referred the tribunal to an email dated 6th April 2011 from Syan

Armstrong of the Applicant to Mr Proktor, the relevant part of which states: *"In light of the above, I am happy to continue your original lines of enquiry from July 2009 alternatively you may find it useful to hold any enquiries until the Final Accounts are issued as it may answer any current enquiries you already have. In addition, I will also honour any agreement with Scott Thompson to hold invoices until the Final Accounts are issued. I await your further instructions on the above with regards to your original enquiries.".*

45. As a result of the abovementioned email and also the Respondent's stated belief that Ms Bennett for the Applicant agreed at the hearing that interest should only be charged from the date on which final accounts were issued, the Respondent has calculated the dates from which interest is due as follows:-

(i) External decorations – 23rd March 2013

(ii) Water cistern works – 9th August 2011

(iii) Emergency lighting – no interest due as no final account has yet been produced.

Tribunal's analysis and determinations

Emergency lighting

46. The main basis for the Respondent's objection to the emergency lighting charges is that she did not receive a final breakdown. The Applicant has explained the reason why a final breakdown has not yet been supplied, namely that the defects liability period has only just ended. However, regardless of the reason for non-provision of a final breakdown in the tribunal's view this is not a legitimate ground for withholding payment. The emergency lighting charge was an estimated charge – not a point disputed by the Respondent – and therefore receipt of a final breakdown was not a valid pre-condition to making payment. The amount of the charge was only capable of challenge on the basis that the estimate itself was unreasonable.

47. As a secondary point the Respondent argues that she was not given sufficient details of the works. In principle this is a point which might be capable of sustaining a challenge to estimated costs, if for example the description of the works was so brief or vague as to make it difficult to ascertain whether the estimate was a reasonable one. However, based on the written and oral evidence before it, the tribunal considers that the Applicant did provide sufficient details of the works. The tribunal notes the details of the works contained in the hearing bundle, which it considers adequate for these purposes, and it accepts the

Applicant's evidence that these details were indeed provided to the Respondent.

48. Accordingly, the tribunal does not accept the Respondent's challenge to the emergency lighting charges and determines that these charges are payable in full.

Water cistern replacement

49. The Respondent argues that the Applicant did not comply with the section 20 consultation requirements in relation to these works. The evidence indicates that the Applicant sent an initial notice of intention on 21st September 2004, prior to the Respondent becoming the leaseholder, and the key difference between the parties seems to be in relation to the further notice that the Applicant states was sent to leaseholders by way of consultation on the tender evaluations for the proposed agreements. The Applicant states that this notice was dated 17th May 2006 and was duly sent; the Respondent states that it was never received.

50. The tribunal has considered the evidence relating to the sending of the notice dated 17th May 2006. The Applicant does not claim that the notice was sent by special delivery (or equivalent); apparently it is not the Applicant's practice to do this, although given that the Applicant is a local authority and has a very large number of leaseholders with whom it needs to communicate it is not surprising that it did not choose to incur the significant extra expense of sending all section 20 notices by special delivery (or equivalent). The Applicant's evidence is that notices were sent out to all leaseholders by ordinary post, that the one addressed to the Respondent was not returned undelivered and that the Applicant received a number of responses from other leaseholders which indicated that – in a general sense – the notice was sent out. Having considered the evidence, the tribunal considers on balance that even if it was not in practice **received** by the Respondent the notice was **sent** by the Applicant.

51. As regards the further notice dated 16th June 2008, the tribunal agrees with the Applicant that the purpose of that further notice was much more limited than as suggested by Mr Proktor. The choice of contractor had already been settled through the consultation that had already taken place prior to the service of the further notice, and this further notice rightly just invited observations on the details and estimated costs of the proposed works to be carried out by the nominated contractor.

52. In the absence of any other relevant arguments regarding compliance with the section 20 consultation requirements, the tribunal's view is that the Applicant did comply with the section 20 consultation requirements in relation to the water cistern replacement works.

53. In the alternative, the Respondent is disputing the payability of the specific charges for overheads, profit percentage and the cost of preliminaries, on the basis that she does not feel that she has been provided with sufficient information to satisfy herself that these charges are reasonable.

54. The tribunal does not consider it necessary or appropriate to summarise the Applicant's evidence regarding overheads, profit percentage and the cost of preliminaries in detail. Much of that evidence constitutes a general explanation as to what these items relate to and a statement that in the professional opinion of Mr Martin in particular it was standard to charge these as separate items and the amounts were reasonable.

55. The tribunal has considered the nature and scale of the works and the individual charges for overheads, profit percentage (as explained by Mr Martin) and preliminaries, and on the basis of the information provided the tribunal accepts that they are reasonable and in line with market norms. Specifically regarding overheads, the tribunal accepts that the Upper Tribunal case of *London Borough of Southwark v Gary Paul and others* referred to by Ms Bennett is authority for the proposition that these can in principle be charged on top of the cost of the works. In the *Gary Paul* case, the Upper Tribunal determined that the overheads in that case comprised the indirect costs necessarily incurred in enabling works to be carried out, such as running an office, and that it was right that the burden of those costs should be borne by those benefiting from the work, namely the leaseholders.

56. Accordingly, in the absence of any stronger challenge to the cost of the water cistern replacement works, the tribunal determines that the cost of these works is payable in full.

External decorating

57. The Respondent again argues that the Applicant has not complied with the section 20 consultation requirements in relation to these works. In this case the situation is different in that the Respondent is not arguing that the Applicant failed to send her any of the relevant notices. Instead she is arguing that the Applicant appears to have sent out the 'stage 1' notice after the 'stage 2' notice.

58. Looking at the stage 1 notice apparently received by the Respondent, the Applicant's handwritten amendment to the date of that notice seems to have been made rather carelessly, but on the basis of the evidence provided – especially the copy signed statement of delivery in the hearing bundle – the tribunal's factual finding is that the stage 1 notice was delivered to the Applicant on 8th January 2007. Accordingly, the stage 1 notice was sent out at the proper time, prior to the stage 2 notice.

59. In the absence of any other relevant arguments regarding compliance with the section 20 consultation requirements, the tribunal's view is that the Applicant did comply with the section 20 consultation requirements in relation to the external decoration works.

60. The Respondent is also challenging the quality of the external decoration works, in particular the quality of the paintwork on the underside of certain walkways.

61. Having considered the parties' written submissions and oral evidence, the tribunal considers the Respondent to have a strong case on this issue. It is common ground between the parties that the work was defective, albeit that the parties are not necessarily in agreement as to the extent of the problem. It is also common ground that an offer was made at a meeting to procure a guarantee for the works. As regards the amount charged for these works, this would not necessarily have been unreasonable had the work been carried out in a good and workmanlike manner. However, it is clear to the tribunal from the copy photographs supplied and from the parties' written and oral submissions that the work was seriously defective.

62. Even the fact of the works initially being defective would not necessarily justify a reduction in the cost if the defects had been remedied to the Respondent's and other leaseholders' reasonable satisfaction at no further cost within a reasonable period of time. However, the defects have still not been remedied and the Applicant has – based on the evidence provided – made no real effort to remedy the problem. Mr Fletcher's evidence suggested a poor grasp of what needed to be done and a lack of interest on the part of the Applicant in taking timely and effective action. As a result, leaseholders have paid a large amount of money for a sub-standard job and have had to suffer the consequences of the poor workmanship over a long period, during which the Applicant had failed to remedy the problem or even to show much interest in doing so.

63. Accordingly, a large reduction in these charges is warranted. The evidence suggests that the Respondent has had some benefit from the works in that they are not defective in their entirety, but on the other hand the evidence shows that there have been significant problems and that the Respondent has suffered inconvenience and aggravation due to the Applicant's failure adequately to grapple with the problem. Taking all of the circumstances together, the tribunal considers that an equitable result would be to reduce the charges for the paintwork by 50%.

64. The Respondent is also disputing the cost of preliminaries and extra scaffolding costs and has raised an issue regarding extensions of time and the calculation of the figure for total measured works.

65. Having considered the evidence, the tribunal's view – in the absence of a more effective challenge by the Respondent – is that the charges for preliminaries are reasonable and within market norms. As regards scaffolding, the Applicant's evidence – which the tribunal accepts on this point – indicates that there were no extra scaffolding costs resulting from the scaffolding remaining in place longer than originally anticipated. As regards the extensions of time, the tribunal considers that it is a normal part of the process to identify further issues during the process which were not previously apparent and that in this case it was reasonable to spend the extra time given the nature of the issues identified. As for the figure for total measured works, the tribunal is satisfied – in the absence of any detailed challenge – that the mathematical calculations on the Applicant's spreadsheet seem to be correct.

66. Regarding the section 20B issue raised by the Respondent, the tribunal does not accept that the Applicant was in breach of section 20B in relation to the external decorating works. As the final account was not more than the estimated invoice previously rendered to the Respondent no section 20B notification was actually needed, the authority for this being the case of *Gilje v Charlegrove Securities* cited by the Applicant.

67. The tribunal notes that in any event the Applicant sent a section 20B notification to the Respondent on 17th November 2011 as a precautionary measure in case the final amount proved to be higher than the estimate. Whilst there is no clear evidence available as to when the cost was "incurred" for the purposes of section 20B and therefore from what date the 18 month period referred to in section 20B would run if necessary to decide this point, equally there is no clear evidence from the Respondent to demonstrate that the cost was incurred more than 18 months prior to the sending of the precautionary notification on 17th November 2011. In particular the tribunal does not accept that the mere provision of a summary of costs referring to an Agreed Final Account as at 30/10/2009 constitutes persuasive evidence that the Applicant incurred the relevant costs on 30th October 2009 as there is no evidence to indicate, for example, that the Applicant was invoiced by the contractor on or anywhere near that date.

68. The tribunal therefore does not accept the Respondent's section 20B argument.

69. Accordingly, the tribunal determines that the cost of the external decoration works is payable in full save that the charges for the paintwork are reduced by 50%. At the hearing three separate sums were identified on the Applicant's Calculation Sheet as between them making up the paintwork charges, namely £8,474.45, £5,001.75 and £913.00, which equals £14,389.20 in aggregate. The Respondent's share of this aggregate amount was 7 divided by 301, which equals £334.63. Therefore, on the assumption that this was indeed the

Respondent's share of the paintwork charges the Respondent's share is reduced by £167.32 to £167.31.

Interest charges

70. The tribunal notes the parties' respective submissions on the payment of interest. Under clause 2(3)(b) of the Lease the tenant covenants with the landlord *"if any payment of or on account of Service Charge is not made on the due date for payment thereof for any reason including dispute as to the amount properly payable then to pay interest thereon from the due date until the date of payment as well after as before judgment upon the amount properly payable at 5% above the National Westminster Bank PLC Base Rate prevailing from time to time".*

71. The tribunal agrees with the Applicant that the base rate for the relevant period has been 0.5% and that in the absence of any other considerations the clause referred to above entitles the landlord to claim interest at 5.5% on unpaid service charges (as well after as before judgment) from the due date until the date of payment, or – for the purposes of this claim – until the date of issue of the claim. This only applies to service charges which are actually payable and therefore does not apply to the 50% of the paintwork charges which have been disallowed.

72. However, the Respondent has referred the tribunal to an email from Syan Armstrong dated 6th April 2011. On the question of whether that email relates to the Property, in the tribunal's view it does. Although the subject heading is 20 Boughton House it is clear that the email from Mr Proktor to which it responds specifically relates to the Property as well as to two other units. Unfortunately, though, the tribunal does not find the email to be very clear and it is therefore difficult to establish what Ms Armstrong's intention was in relation to interest charges in writing this email. Was she stating that these sums were not to be treated as payable until the issuing of final accounts, thereby perhaps implying that interest would not begin to be payable until after final accounts were issued, or was she trying to say something else? Did she intend to bind the Applicant and could she reasonably have been understood to have the authority to do so? Also, did her comments relate to all outstanding charges at that point or could they reasonably be read as doing so?

73. The above questions are, in the tribunal's view, significant ones, but also ones which the tribunal does not feel that the Applicant has had an adequate opportunity to address. Therefore, the tribunal feels that it has no choice but to allow the Applicant to make written submissions on the specific points referred to in paragraph 72 above and then to allow the Respondent a right of reply. It is open to the parties to agree a joint position on the amount of interest payable and to communicate

this to the tribunal, but in the absence of agreement the Applicant is directed to send to the tribunal (with a copy to the Respondent) its written submissions on the points referred to in paragraph 72 above within 14 days after the date of this decision and the Respondent is directed to send to the tribunal (with a copy to the Applicant) its written comments on the Applicant's submissions within 28 days after the date of this decision.

74. Incidentally, for the avoidance of doubt, the interest charge is an administration charge (not a service charge) and therefore the tribunal's jurisdiction on this issue is derived not from the 1985 Act but from Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Communication issues

75. The tribunal accepts that at certain points the Applicant's responses to requests for information by or on behalf of the Respondent were unreasonably slow and/or inadequate. Equally there were periods in which the Applicant dealt with matters in a more timely and effective manner. The exact degree to which the Applicant fell short at times might have been relevant, for example, to any applications for costs but there have been no such applications. It does not, in the tribunal's view, constitute a basis for reducing the charges for emergency lighting works, water cistern replacement works or external decoration works save to the limited extent already referred to above.

Cost Applications

76. No cost applications were made by either party. Ms Bennett for the Applicant said that the Applicant would not be putting through the service charge its costs incurred in connection with these proceedings.

Name: Judge P Korn **Date:** 25th June 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not

an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.