FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00BK/LSC/2020/0482** **LON/00BK/LSC/2020/0044**
HMCTS code (paper, video, audio)	**:**	**P: PAPER REMOTE**
Property	**:**	**Flats 1 and 2, 502 Harrow Road, London W9 3QA**
Applicants	**:**	**Fiorina Fortunato (1)** **Cadenza Properties (2)**
Representative	**:**	**Mr J Platt FRICS**
Respondents	**:**	**Harminder Pal Singh (1)** **Baljit Kaur (2)**
Representative	**:**	**Mr R Bowker of Counsel represented the Respondents at the hearing**
Type of applications	**:**	**For the cost orders specified in this decision**
Tribunal members	**:**	**Judge N Hawkes** **Mr T Sennett FCIEH** **Mr J Francis QPM**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**11 November 2020**

DECISION

Covid-19 pandemic: PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that we were referred to are contained in written submissions dated 14 September 2020, 22 September 2020 and 12 October 2020, the contents of which we have noted. The orders made are described below.

Decisions of the Tribunal

(1) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred by the Respondents in connection with applications LON/00BK/LSC/2020/0482 and LON/00BK/LSC/2020/0044 are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

(2) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants' liability, if any, to pay an administration charge in respect of the Respondents' costs of these proceedings.

(3) The Tribunal makes an order under Rule 13(2) of Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 requiring the Respondents to reimburse the Tribunal fees paid by the Applicants in respect of these proceedings.

The applications

1. Following the receipt of a substantive Tribunal decision dated 14 August 2020, the Applicants made an application dated 8 September 2020 seeking the orders under section 20C of the Landlord and Tenant Act 1985 ("section 20C"); paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("paragraph 5A"); and under rule 13(2) of Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 ("rule 13(2)").

2. On 14 September 2020, directions were given. The Tribunal has received submissions from the Respondents dated 22 September 2020 and submissions in reply from the Applicants dated 12 October 2020.

The submissions

3. The Applicants' submissions are as follows.

4. The Tribunal has determined that no service charges are currently payable by the Applicants because the Respondents have not fulfilled a condition precedent to liability. The Tribunal has also determined that the Respondents

have failed to comply with the statutory consultation requirements in respect of the major works.

5. The Respondents could have avoided both applications being made by providing a balancing statement and final demand, in accordance with the lease, and by having regard to correspondence from the Applicants' solicitor between August 2019 and November 2019 relating to the flawed consultation process.

6. In addition, the Tribunal determined what sums would be payable if the condition precedent were to be complied with. These findings result in significantly reduced sums being potentially recoverable from the Applicants as on account service charges.

7. The Respondents have sought to claim administration charges from both Applicants, variously described as "late payment administration fee" or "court fee". However, on the basis that the Applicants currently have no liability to make any payments, there have been no late payments. The Tribunal accepted the Applicants' contention that all payments have been made under protest.

8. The Applicants state that they have succeeded in their applications and contend that it is just and equitable in the circumstances for orders to be made under section 20C and under paragraph 5A. They also seek an order for the reimbursement of Tribunal fees under rule 13(2).

9. The Respondents' submissions are as follows.

10. By clause 3.5.3 of the Lease, the Tenant is required to pay to the Landlord on demand all costs, charges and expenses (including all legal costs) which may be incurred by the Landlord incidental to the recovery of monies due under the Lease.

11. The main legal principles relevant the exercise of the discretion under section 20C are discussed at §§17-05 to 17-07 of Tanfield Chambers' Service Charges and Management, 4th edition.

12. The Respondents submit that they ought to be able to recover the costs of these proceedings, or a proportion of the costs to reflect the measure of their success. The Respondents further submit that the correct measure of success in these proceedings is to compare issues raised by the Applicants with the outcome at the final hearing on each of those issues. The Respondents have identified the following issues.

13. The Applicants argued that final accounts should be considered by the Tribunal. The Respondents argued that they should not. The Tribunal determined this issue in the Landlord's favour.

14. As regards the major works, the Applicants argued, in the alternative, that (a) only £250 per tenant was due or (b) the value of the work was £13,365 + VAT (£16,038). The Tribunal found that the value of the work was £25,000. Accordingly, the Respondents have succeeded by defeating the Applicants' primary case and in establishing that the value of the work was substantially more than the sum for which the Applicants contended.

15. Furthermore, the Applicants' case was expressed inadequately in their schedule. It had to be re-pleaded and further evidence served half-way through the final hearing in order for the Respondents properly to understand what was being alleged.

16. The Applicants argued that Mr Reed had acted dishonestly by creating site inspection reports and the Hammer & Chisel breakdown after the event so as falsely to create the impression they were contemporaneous. The Tribunal found that it was not necessary to make findings of fact about the allegations.

17. The Applicants raised the issue of the 2020 on-account service charges in their schedule but abandoned this issue at trial.

18. The Applicants made a late application for permission to rely on expert evidence. The Respondents responded in detail, asking for the application to be granted only on conditions. The Tribunal allowed the application on the conditions stipulated by the Respondents. The Applicants then abandoned any reliance on expert evidence.

19. The Applicants served statements from four witnesses of fact they decided at the final hearing not to call, without explanation. The Respondents had prepared to cross-examine each of these witnesses.

20. Further, the Respondents state that in respect of the out of hours helpline, accountancy costs; management set up fee; insurance valuation; insurance; cleaning; fire equipment maintenance; health and safety/fire risk assessment, the Applicants argued that the charge was not reasonably incurred. The Tribunal found in the Respondents' favour.

21. The Respondents submit that these are important issues in respect of which the Tribunal rejected the Applicants' case and found in the Respondents' favour, or in respect of which the Applicants changed or abandoned their case. It was, therefore, necessary for the Respondents to litigate and they enjoyed a substantial element of success.

22. In response, the Applicants state as follows.

23. In respect of the major works, the Respondents were seeking to recover £42,540, plus supervision fees of £4,254. The Tribunal determined that "£25,000 in total" is recoverable. The amount recoverable in respect of supervision fees was determined to be £nil. The Applicants therefore disagree

that this element of the Tribunal's determination represents a victory for the Respondents.

24. Further, the Applicants state that the Respondents have conflated two separate applications. As part of the application under section 27A of the Landlord and Tenant Act 1985, the Tribunal determined that the statutory consultation requirements had not been complied with. The recoverable sum was, therefore, limited to £250 per Applicant in accordance with the legislation. The Applicants were, therefore, entirely successful.

25. The Respondents then applied for dispensation from the statutory consultation requirements under section 20ZA of the 1985 Act and dispensation was granted subject to the recoverable sum being limited to "£25,000 in total". Further, it was condition of granting dispensation that "the Respondents' costs of the dispensation application shall not be recoverable from the lessees through the service charge."

26. The Tribunal has, therefore, in effect already determined that the Respondents cannot recover costs of the dispensation application. In considering the section 20C application, therefore, the Tribunal is only concerned with the section 27A determination, where the Applicants were entirely successful.

27. The Applicants do not accept that they made a late application to rely on expert evidence. They state that they actually requested permission to rely on expert evidence by letter dated 5 February 2020, within one week of Mr Platt being engaged by the Applicant to undertake a management audit. A copy of the relevant letter was supplied with Mr Platt's submissions.

28. The Applicants state that the Respondents chose not to provide Mr Platt with any of the documents which he had requested until 20 April 2020 and that it was this delay which prompted the Applicants' further request on 4 May 2020 to rely upon expert evidence. The Applicants state that their decision not to rely on expert evidence was entirely the result of the Respondents' delay in providing documents.

29. As regard the witnesses of fact who were not called, the Applicants set out their reasons for this and state that by not calling these witnesses, whose evidence related to the reasonableness of the actual service charge costs, the Applicants saved the Tribunal time.

30. As regards the indications given by the Tribunal concerning the individual service charge items identified by the Respondents, the Applicants' position appears to be that their proposed grounds of challenge related to the actual rather than the estimated service charge costs, which the Tribunal determined were not before it.

31. In summary, the Applicants maintain that they were successful and that the orders sought should be made.

The Tribunal's determinations

32. Section 20C of the Landlord and Tenant Act 1985 provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Residential Property Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant, or any other person or persons specified in the application.

33. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides that:

> (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
>
> (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

34. The question for the Tribunal under both section 20C and paragraph 5A is what is "just and equitable". These provisions provide the Tribunal with a wide discretion to exercise having regard to all the circumstances of the case.

35. In *Tenants of Langford Court v Doren Ltd (LRX/37/2000)*, His Honour Judge Rich QC stated in respect of section 20C (emphasis supplied):

> *"In my judgement* ***the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances*** *... Where, as in the case of the LVT there is no power to award costs, there is no automatic expectation of an order under s.20C in favour of a successful tenant..."*

36. In *Schilling v Canary Riverside (LRX/26/2005)* His Honour Judge Rich QC reconsidered and reaffirmed the principles in *Doren*. He also stated, in the context of a service charge dispute, that weight should be given "to the degree of success, that is the proportionality between the complaints and the determination".

37. As noted by the Respondents, the relevant principles are discussed at §§17-05 to 17-07 of Tanfield Chambers' Service Charges and Management, 4th edition.

38. The Tribunal accepts that the Respondents were successful in respect of certain procedural issues. However, the Tribunal notes that it was the Respondents who invited the Tribunal to make findings of fact concerning Mr Reed's honesty which the Tribunal did not accept were necessary (see paragraphs 67 to 68 of the Decision dated 14 August 2020).

39. Further, Mr Reed accepted that documents were disclosed to the Applicants late or not at all (see paragraphs 67(ii), 91 and 96 of the Decision) and the Tribunal considers that this would have made the preparation of the Applicants' case more difficult than it would otherwise have been.

40. The Tribunal has placed significant weight on the fact that, in respect of the application under section 27A of the Landlord and Tenant Act 1985, the Applicants have been wholly successful because the Tribunal has determined that nothing is presently payable. Further, the Tribunal found that the statutory consultation requirements had not been complied with. The majority of the Tribunal's time was spent considering matters relating to these two issues.

41. At the invitation of the parties, the Tribunal has given an indication of the findings that it would have made had the condition precedent in the lease been complied with. However, that these indications do not form part of the Tribunal's substantive decision and do not detract from the Applicant's success. Further, as noted by the Applicants, the Tribunal indicated that it would have made reductions in respect of service charge items which are not referred to in the Respondents' submissions.

42. As regards the application for dispensation, as pointed out by the Applicants, it was a term of granting dispensation that "the Respondents' costs of the dispensation application shall not be recoverable from the lessees through the service charge".

43. The Tribunal does not accept the Applicants' submission that this term means that, in all circumstances, the Respondents are prevented from potentially recovering the costs of the dispensation application. Having considered the terms on which dispensation was granted and the findings set out in the Tribunal's original decision, the Tribunal is satisfied that it would not be fair to enable the Respondents' to recover these costs through the service charge in the unlikely event that they do not rely upon the grant of dispensation.

44. In all the circumstances, the Tribunal is satisfied that in respect of both of the applications which were before the Tribunal it is just and equitable to make orders under section 20C and paragraph 5A and to exercise its discretion under paragraph 13(2) to order the Respondents to reimburse the Tribunal fees paid by the Applicants.

Name: Judge Naomi Hawkes **Date:** 11 November 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00BK/LSC/2019/0482** **LON/00BK/LDC/2020/0044**
HMCTS code (paper, video, audio)	**:**	**P: PAPER REMOTE**
Property	**:**	**Flats 1 and 2, 502 Harrow Road, London W9 3QA**
Applicants	**:**	**Fiorina Fortunato (1)** **Cadenza Properties (2)**
Representative	**:**	**Mr J Platt FRICS**
Respondents	**:**	**Harminder Pal Singh (1)** **Baljit Kaur (2)**
Representative	**:**	**Mr R Bowker of Counsel represented the Respondents at the hearing**
Type of application	**:**	**Costs assessment**
Tribunal members	**:**	**Judge N Hawkes** **Mr T Sennett FCIEH** **Mr J Francis QPM**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**20 November 2020**

DECISION

Covid-19 pandemic: PAPER DETERMINATION

This has been a paper determination which has not been objected to by the parties. The form of remote determination was P:PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The documents that we were referred to are contained in written submissions dated 22 September 2020 and 12 October 2020, the contents of which we have noted. The orders made are described below.

Decision of the Tribunal

The Tribunal assesses the Applicants' reasonable costs of instructing Mr Platt to investigate the issues of consultation and prejudice and of responding to the dispensation application in the total sum of £8,500.

The application

45. This decision should be read together with the Tribunal's substantive decision dated 14 August 2020 which included a determination that:

> *"(3) Dispensation from the statutory consultation requirements is granted on terms that:*
>
> ....
>
> *b. The Respondents shall pay the Applicants' reasonable costs of instructing Mr Platt to investigate the issues of consultation and prejudice and of responding to the dispensation application, to be assessed if not agreed."*

46. These costs are not agreed and they therefore fall to be assessed by the Tribunal.

The Tribunal's Determinations

47. Mr Platt has submitted a bill in the sum of £9,300 in respect of the work identified at paragraph (3)(b) of the Tribunal's decision. The Respondents dispute this bill in the following respects.

The hourly rate

48. The Respondents submit that Mr Platt's hourly rate should be reduced from £200 to £75 because Mr Platt has minimal overheads; he works from home; he has no travel expenses; the legislation and case law he needs are all available to him for free on-line; he needs only a desk, computer, wi-fi and a telephone and, on the Respondents' case, if Mr Platt works 10 hours each day, this will provide him with a monthly income of £3,000.

49. In response, Mr Platt on behalf of the Applicants explains that in order to obtain Mr Platt's services the Applicants contracted with Section20 Limited, a company of which Mr Platt is the managing director ("the Company"). Accordingly, on the Applicants' case, their costs of instructing Mr Platt to investigate the issues of consultation and prejudice and of responding to the dispensation application were the fees which they paid to the Company. No issue has been taken in relation to this.

50. Mr Platt states that he is a Chartered Surveyor and the Company is a firm of Chartered Surveyors specialising in all aspects of leasehold property management. It is regulated by the Royal Institution of Chartered Surveyors and it incurs costs in maintaining that regulation. Mr Platt explains that the Company maintains two office bases in North Yorkshire and Hertfordshire. Significant overheads are incurred in maintaining both offices and in travelling between them.

51. Mr Platt states that the Company has many other overhead costs, including the costs of professional indemnity insurance, public liability insurance, staff training and education, complying with RICS compulsory professional development requirements and so on. He says that, over the last 6 years, the ratio of net profit to turnover of the Company has averaged 26% before any salary or dividend payments are made to Mr Platt i.e. the average proportion of turnover available for distribution to shareholders is 26%.

52. Further, Mr Platt explains that he is a Fellow of the Royal Institution of Chartered Surveyors and a Fellow of the Institute of Residential Property Management and that he has personal overheads, including the costs of annual subscriptions and of compulsory professional development. Mr Platt states that in order for him to receive payment at a rate of £75 per hour, it would be necessary for the Company to charge him at out £290 per hour.

53. Notwithstanding this, the Applicants submit that in assessing a reasonable hourly rate by reference to Mr Platt's assumed overheads the Respondents have applied the wrong test. The Applicants contend that the correct approach is for the Tribunal to determine a reasonable hourly rate by having regard to the rates charged by similarly regulated firms of Chartered Surveyors when providing similar services.

54. Mr Platt also states that the Company is highly regarded for its specialist expertise in relation to the management of residential leasehold properties. He says that this is evidenced by the fact that its clients include the Grosvenor Estate in relation to their Mayfair and Belgravia Estate, the Wellcome Trust in relation to their South Kensington Estate and the Church of England in relation to their Hyde Park Estate. He states that these are all large institutional landlords who have ongoing relationships with the large, multi-disciplined firms of Chartered Surveyors operating globally who also value the specialist expertise of the Company. Mr Platt states that the Company's current clients also include Frasers Property and LendLease UK; the UK arms of two of the largest property development companies in the world.

55. Mr Platt submits that it was necessary for the Applicants to undertake a management audit under Section 78 of the Leasehold Reform Housing and Urban Development Act 1993 in order to obtain disclosure of documents from the Respondent and evidence of inadequate procurement. He says that a person is only qualified for appointment under this section if they are a qualified surveyor or a qualified accountant.

56. Mr Platt points to the fact that, in the present case, the Applicants instructed the Company without knowing that the relevant fees would potentially be recoverable from the Respondents and he submits that the hourly rate charged is well within the market norm for the specialist services and expertise provided.

57. As regards Mr Platt's role as an advocate at the hearing, the Applicants contend that the Tribunal should have regard to the Guideline Hourly Rates for solicitors for the following reasons. Mr Platt is a Fellow of the Royal Institution of Chartered Surveyors and a Fellow of the Institute of Residential Property Management. He has 37 years of professional experience within this specialist sector. Mr Platt was retained by the Ministry of Housing Communities and Local Government as a "critical friend" during their review of Section 20 consultation regulations. He was commissioned by RICS to be the author of their good practice guide "The Management of Mixed-use Developments" and to be the author of the property management chapter within the RICS Residential Property Standards (5th Edition), the majority of which has been incorporated into the RICS Service Charge Residential Management Code (3rd Edition).

58. The Applicants therefore contend that the Tribunal should consider Mr Platt to be a Grade A fee earner. The Applicants' properties are located in London and the hearing took place before the London Tribunal. However, the head office of the Company is in Cleveland and so the hourly rates for Teeside may be applicable. In any event, both potential rates for a Grade A solicitor are above the rate of £200 per hour charged by the Company in respect of Mr Platt's services (£229-£267 in respect of outer London and £201 for Teesside).

59. The basis for the assumptions made by the Respondents concerning Mr Platt's working arrangements is unclear. In any event, we consider that we must focus on the nature of the work identified by the Tribunal, namely "instructing Mr Platt to investigate the issues of consultation and prejudice and of responding to the dispensation application", and that the appropriate reference point is the market rate charged by other experts for providing similar services. The Respondents do not contend that Mr Platt's hourly rate exceeds the market norm and the Tribunal has also taken into account its general knowledge and experience of the fees charged by experts.

60. Whilst Mr Platt may be instructed in respect of more substantial matters by international clients, we consider that we must assess the reasonableness of the relevant costs with reference to the nature of the work carried out in the present case. Accordingly, we have focussed on the value, importance and complexity

of this work and on the degree of skill, effort, specialised knowledge and responsibility required. We consider that it was reasonable for the Applicants to instruct an experienced surveyor and we note that, whilst Mr Platt's hourly rate will be higher than that of a more junior colleague, the time spent on preparation and other matters must also reflect his high level of experience and expertise.

61. Mr Platt was acting as an advocate and not as an expert at the hearing. Mr Platt is not a solicitor but we recognise that his specialist knowledge and expertise as a surveyor with extensive experience in this field assisted him in his role as advocate, in particular, by enabling him to readily focus his cross-examination and submissions on the relevant issues.

62. Having considered all of these factors, we find that the hourly rate £200 is reasonable.

Work phases 29 Jan 2020 to 19 April 2020 and 20 April 2020 to 6 May 2020

63. The Respondents note that, during these two work phases, Mr Platt spent 4 hours and 8 hours respectively on the following:

"Section 20 consultation documents and associated correspondence"

And, following the Respondents lodging a dispensation application on 5th March:

"Major works estimates and invoices".

"Major Works

Section 20 consultation documents and associated correspondence.

Procurement process, including reviewing: specifications, seeking of estimates, due diligence process, client reporting, selection process.

Reviewing terms of appointment of contractor, project management and supervision.

Review of management agreement with specific reference to management fees and major works supervision.

Review of management agreement with specific reference to management fees and major works supervision fees schedule."

64. The Respondents submit that nothing is reasonably recoverable in respect of this work because it duplicated work which had already been carried out by a Mr Walters free of charge. The Respondents assert that the work Mr Platt carried out between 29 January 2020 and 6 May 2020 simply involved familiarising himself with the work of Mr Walters. They say that it was not until 7 May 2020 that Mr Platt took on work as an advocate and, in consequence, nothing is recoverable for the period before 7 May 2020.

65. In response, the Applicants state that the work carried out by Mr Platt through the Company during this period was required in order to demonstrate to the Tribunal that the Respondents had failed to comply with the statutory consultation process and that the Applicants had been prejudiced as a result.

66. They state that Mr Walters had no access to the most of the documents relied upon by Mr Platt which were only disclosed as part of Mr Platt's management audit and that Mr Walters' role was completely different to that of Mr Platt.

67. By way of example, Mr Platt has listed ten matters which were of importance to the Tribunals' determination which were only evident as a result of his investigations. Further, the Applicants state that, to the extent that there may have been duplication, this is irrelevant as the Applicants have not sought to recover any costs in relation to Mr Walters.

68. In our view, Mr Platt through the Company is entitled to charge a reasonable fee for familiarising himself with the work of a predecessor. We recognise that this will be less time consuming that carrying out this work from the start. However, we also recognise that Mr Platt needed to gain a detailed understanding of the relevant documents and in order to reach his own conclusions and advise the Applicants.

69. Further, it was evident to the Tribunal at the hearing that, as submitted by the Applicants, the work carried out by Mr Platt during this period went beyond familiarising himself with the work of Mr Walters.

70. Having considered Mr Platt's breakdown, the relevant documents, and the submissions and evidence presented at the hearing, we find that it is reasonable to allow 10 hours in total in respect of work phases 29 Jan 2020 to 19 April 2020 / 20 April 2020 to 6 May 2020.

The work carried out after 7 May 2020

71. The work carried out by Mr Platt after 7 May 2020 is separated into three phases – (1) preparing for the hearing on 8 and 9 June 2020 (2) appearing on 8 and 9 June 2020 and 2 and 3 July 2020 and (3) work carried out between the hearings. In respect of these phases, Mr Platt has estimated that his time dealing with section 20 and dispensation-related issues is as follows – (1) 8 hours (2) 15.5 hours and (3) 11 hours.

72. The Respondents submit that, from this total of 34.5 hours, deductions ought to be made by reason of two matters:

(a) time wasted due to Mr Platt's wi-fi being down;

(b) the re-pleading of the Applicants' case concerning major works between the two hearings.

73. The Respondents contend that, had the Applicants' case been ready on 2 July 2020 and had Mr Platt's wi-fi been working properly, this case would have concluded in two days. The Respondents state "this means that Mr Platt's reasonable costs are (a) his 8 hours' preparation for the hearing and (b) his 15.5 hours involved in the hearings on 8 and 9 June 2020".

74. The Applicants state that the length of the hearing is a matter of fact and Mr Platt represented the Applicants throughout; that the Respondents' assertion that the hearing may have concluded more quickly if the Applicants had acted differently or if Mr Platt's broadband provider had provided a more stable service is simply conjecture; and that the Applicants' supplementary Statement of Case was prepared in response to Directions issued by the Tribunal at the request of the Counsel for the Respondents (and with the agreement of Mr Platt).

75. The Applicants note that the Respondents do not take issue with Mr Platt's allocation of time to the dispensation application as opposed to the separate application under section 27A of the Landlord and Tenant Act 1985 which was also before the Tribunal. As regards time spent at the hearing, Mr Platt has allocated 50% of this time to each application.

76. There is no evidence before the Tribunal that problems experienced with Mr Platt's broadband on the morning of one of the hearing days were within Mr Platt's control rather than the result of failings on the part of the relevant broadband provider. Accordingly, the Tribunal is not satisfied that the relevant costs fall to be reduced by virtue of this matter.

77. On 9 June 2020, the Tribunal gave the following directions:

1. The proceedings shall be adjourned part-heard to 2 and 3 July 2020 with a time estimate of 1.5 days, starting at 10 am.

2. The Respondents shall, by 11 June 2020, serve on the Applicant all documents which have not already been served which are relevant to the service charge costs for the service charge years 2018 and 2019.

3. The Applicants shall, by 19 June 2020, serve on the Respondent a supplemental Statement of Case identifying in detail the Applicant's case concerning the reasonableness and payabilty of the cost of the major work,

including to the roofs and windows of the Building, together with any additional witness evidence and/or other evidence in support and a supplemental Scott Schedule (in Word) listing the items in dispute.

4. The Respondents shall, by 24 June 2020, serve on the Applicant a supplemental Statement of Case in reply together with any additional witness evidence and/or additional documentary evidence in support and the completed Scott Schedule.

5. The Applicants shall, by 29 June 2020, file with the Tribunal and serve on the Respondent a supplement bundle containing the additional documents (by email in PDF format).

6. The Respondents shall file with the Tribunal and serve on the Applicant a joint bundle of authorities (by email in PDF format) by 29 June 2020. The parties' representatives shall liaise with each other in order to agree the contents of this bundle.

78. We note that we are only concerned with the costs of the dispensation application and that Mr Platt's estimate that this application took 50% of the time, therefore two of the four hearing days, is not disputed. We accept that the re-pleading of the Applicants' case increased the time spent in dealing with the dispensation application. However, we consider that the need for further clarity was due, in part, to the fact that relevant documents were disclosed to the Applicants late or not at all which made their initial preparation difficult. Weighing up all of these factors, we find that the recoverable time spent by Mr Platt in respect of work carried out after 7 May 2020 falls to be reduced by 2 hours.

Conclusion

79. Applying the findings which are set out above, the Tribunal assesses the Applicants' reasonable costs of instructing Mr Platt to investigate the issues of consultation and prejudice and of responding to the dispensation application in the total sum of £8,500.

Name: Judge Naomi Hawkes **Date:** 20 November 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).