FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2021/0087 and LON00BK/LVT/2021/0005 (CVP REMOTE)**
Property	**:**	**15A and 15B Clifton Villas, London W9 2PH**
Applicant/tenants	**:**	**Ms. G. Boland Christopher Saunders-Latham and Antonia Saunders-Latham**
Representatives	**:**	**In person**
Respondent/landlord	**:**	**15 Clifton Villas Limited as freeholders of the Property**
Representative	**:**	**Susan Wolff; Director**
Type of Applications	**:**	**(1) To vary leases (Part IV Landlord and Tenant Act 1987)** **(2) For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Mr Kevin Ridgeway MRICS**
Date and venue of Hearing	**:**	**9 November 2021 by an online video hearing**
Date of Decision	**:**	**22 November 2021**

DECISION

Decisions of the tribunal

The tribunal determines that: -

(1) With regard to the first application the Tribunal grants the application for the variation of leases at the property under sections 35 and 38 of the Landlord and Tenant Act 1987, ("the Act"). The relevant legislation is set out in an appendix to this decision. The reasons for the decision are set out below.

(2) And with regard to the second application: -

a. Doors and windows in Flats A and B:

The Tribunal declines to make an order/determination in this regard.

b. S.20 Consultation process:

The Tribunal declines to make an order/determination in this regard.

c. Intercom system and electrical upgrade:

As there was no consultation and no application for dispensation by the landlord the Tribunal disallows both amounts and limits the liability of the tenants to the statutory limit of £250 each tenant.

d. Fire safety works:

As there was no consultation and no application for dispensation by the landlord the Tribunal disallows this amount and limits the liability of the tenants to the statutory limit of £250 each tenant.

e. Late provision of accounts:

The Tribunal declines to make an order/determination in this regard.

f. Flat E £5000 contribution:

the sum of £5000 is properly payable by the respondent pursuant to the terms of a settlement agreement made between the parties and dated 25 July 2016.

g. Cost of water tap in garden:

The Tribunal will allow the reduced sum of £1500 as being the reasonable charge for this installation.

h. Standard of works:

the Tribunal decided to reduce this service charge to the total sum of £2000.

i. Otherwise, if service charge items are not specifically mentioned under this heading, but were challenged by the applicants, then the Tribunal has found them to be reasonable.

(3) The tribunal further determines that it is just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985 that 100% of the costs incurred by the respondent in connection with these proceedings (the two applications) should not be taken into account in determining the amount of any service charge payable by the tenants.

The applications

1. There were two applications before the tribunal, first to vary leases pursuant to the provisions of Part IV Landlord and Tenant Act 1987, and secondly, for the determination of the liability to pay and reasonableness of service charges pursuant to the provisions of s.27A Landlord and Tenant Act 1985. In the first application the applicant was the landlord with the tenants being the respondents. In the second application the tenants were the applicants and the landlord was the respondent. In these circumstances and for the sake of clarity, I will adopt the terms respondent/landlord and applicant/tenant to describe the parties in both substantive applications. The tenants also sought an order to be made under section 20C of the Landlord and Tenant Act 1985.

2. So first, the landlord seeks to vary leases at **15A and 15B Clifton Villas, London W9 2PH** ("the property") under the provisions of Part IV, (Variation of Leases), of the Landlord and Tenant Act 1987. The requested lease variation are as follows: -

3. For 15A Clifton Villas, Lease dated 8 October 1999, title number NGL779510 "The definition of the Specified Proportion of Service Charge in the Particulars of the Original Lease shall be "25%, and, following completion of development works to Flat E, shall be 26.73%, based on Gross Internal Area, and shall replace '20%'"

4. For 15B Clifton Villas, Lease dated 14 October 1999, title number NGL779518 The definition of the Specified Proportion of Service Charge in the Particulars of the Original Lease shall be "25%, and, following completion of development works to Flat E, shall be 22.19%, based on Gross Internal Area, and shall replace '20%'".

5. For 15C Clifton Villas, Lease dated 10 May 2016 and Deed of Variation 9 November 2016, (original lease dated 8 October 1999), title number NGL964712 Delete Clause 5.5 in the Lease dated 10.05.2016 ,as inserted by the Deed of Variation 9 November 2016, and insert new Clause 5.5 : "The definition of the Specified Proportion of Service Charge in the Particulars of the Original Lease shall be 25%, and, following completion of development works to Flat E, shall be 19.65% based on Gross Internal Area, and shall replace '20%'".

6. For 15D Clifton Villas, Lease dated 22 June 2016 and Deed of Variation 9 November 2016, original lease dated 8 October 1999, title number NGL 961256 Delete Clause 5.5 in the Lease dated 22 June 2016, as inserted by the Deed of Variation 9 November 2016, and insert new Clause 5.5: "The definition of the Specified Proportion of Service Charge in the Particulars of the Original Lease shall be 25%, and, following completion of development works to Flat E, shall be shall be 15.64%, based on Gross Internal Area, and shall replace '20%' ".

7. For 15E Clifton Villas, Lease dated 9 November 2016, title number NGL964716 The definition of the Specified Proportion of Service Charge in the Particulars of the Original Lease shall be " 15.8 %, based on Gross Internal Area and shall only come into effect following completion of development works to Flat E, " and delete " 14.88% (based on Gross Internal Habitable Area) and such percentage shall only come into effect upon Completion of the development Works of the premises"

The hearing

8. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of safety concerns and the restrictions and regulations arising out of the Covid-19 pandemic.

9. The Tribunal had before it two electronic/digital trial bundles of documents prepared by the parties, in accordance with previous directions. Regrettably the digital bundles were not as the Tribunal would have preferred. The Tribunal was very disappointed by the nature of the several trial bundles that were supplied to it for the hearing. They were not really submitted in accordance with previous Directions and were poorly organised in a way that the Tribunal found unhelpful and overly time consuming to refer to.

10. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the MoJ Cloud Video Hearing Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in at least two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties.

11. The Tribunal noted that on 12 July 2021 Judge Nicol issued a notification order that the respondent had been barred for non-compliance with previous directions. In particular the respondent had failed to comply with paragraph 7 of the Tribunal's directions dated 28th April 2021 and varied on 17th May 2021. The respondent was warned as to the consequences of non-compliance in both directions and by letter dated 6th July 2021. The respondent did not respond to any of these notifications and, accordingly, was barred from taking further part in the proceedings pursuant to rule 9(7) of the Tribunal (Procedure) (First-tier Tribunal) (Property Chamber) Rules 2013.

12. Subsequently Judge N Carr considered an application to have the bar lifted. The respondent director set out the circumstances of her illnesses to the Tribunal. She did not attach any medical evidence. The conditions set out if true are such that Judge Carr said it is not difficult to anticipate they would have an impact on her ability to conduct litigation. Judge Carr noted that the respondent said that she was being assisted with this litigation. Judge Carr wrote that the respondent's compliance with Directions given by the Tribunal in LON/00BK/LSC/2021/0087 had been woeful. Judge Carr further observed that the Leaseholders (in their capacities simultaneously as applicants were right to complain about Ms Wolff's conduct of these cases. In the circumstances, and with some reluctance, Judge Carr lifted the bar in relation to this litigation

The determination

13. When issued, in 1999, both the lease for 15A and 15B Clifton Villas W2 9PH were issued with identical service charge provisions, as were the leases for 15C and 15D Clifton Villas. At clause 7(2) of each of the leases, the leaseholder covenants with the landlord, "to pay the Specified Proportion of the Service Provision during the term by equal payments monthly in advance". the Specified Proportion of Service Charge given in the Particulars of the leases for 15A Clifton Villas and 15B Clifton Villas is and remains 20%. Originally there were four flats and so the total service charge percentage amounted to merely 80%. In practice the leaseholders paid 25% notwithstanding the terms of the leases. The freeholder obtained planning permission for a further flat and a fifth flat was eventually constructed within the property, that is flat 15E.

14. The landlord (freehold title: NGL779152) wishes to apply to Tribunal to vary the terms of the underleases for 15A, 15B, 15C, 15D and 15E Clifton Villas. The application is made on the basis that the leases for 15A and 15B Clifton Villas fail to make satisfactory provision with respect to the computation of a service charge payable under the lease because the total recoverable service charge does not total 100%. The aggregate of the amounts that would be payable as a service charge for the repair or maintenance of the building containing the flats for which these leases have been issued is less than the whole of any such expenditure.

15. The main provisions of section 35 of the 1987 Act state: -

> *"35 Application by party to lease for variation of lease.*
>
> *(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.*
>
> *(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—*
>
> *(a) the repair or maintenance of—*
>
> *(i) the flat in question, or*
>
> *(ii) the building containing the flat, or*
>
> *(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;*

(b)the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat); ...."

16. Accordingly, there must be something in the lease that according to statute means that the lease fails to make satisfactory provision.

17. Therefore, the starting point is that there must be something unsatisfactory. Is there an objective problem? The Tribunal was mindful of the recent decision of the Upper Tribunal in the case of *Triplerose Limited v Ms Bronwen Stride* [2019] UKUT 0099 (LC) where Judge Behrens made it clear that if a variation is sought then there must be evidence of a problem or difficulty arising from the term that is subject to the possible variation.

18. The question of what is satisfactory provision was reviewed by Judge Cooke in the case of *London Borough of Camden v Morath* [2019] UKUT 193 (LC); [2020] L. & T.R. 4 where she wrote (Bold made by this Tribunal): -

The word "satisfactory" is not defined in the statute. I have been referred to the Tribunal's decision in Triplerose Ltd v Stride [2019] UKUT 99 (LC). That was an appeal from the FTT's decision, on an application under s.35, to vary the lease of a basement flat in a building divided into four flats. The other three leases required the tenants to contribute towards the cost of the repair and renewal of the building and the management of the building, whereas the lease of the basement flat required the tenant only to contribute to the cost of external painting. The tenant's appeal succeeded. At [39] the Tribunal observed that the terms of the four leases:

"... demonstrate an astonishing lack of care and illustrate the dangers of cutting and pasting parts of a lease to another lease

without checking the details. … The result is a mess. We … agree that a layman unversed in the jurisprudence surrounding section 35 of the 1987 Act might describe it as 'unsatisfactory.'

40. However, in our view … the fact that the proposed variations are common or standard does not make the original terms unsatisfactory. Equally the fact that different tenants make different contributions does not make the lease unsatisfactory. There is a repairing covenant so this is not a case where there is no obligation to repair. … We accept that there might be circumstances where the lack of adequate contributions from Triplerose could render the lease unsatisfactory. However, that can only be established by evidence. If, for example, the building required a major roof or other structural repair beyond the means of [the other tenants] that might constitute the necessary evidence. But there is no such evidence at present."

15 The Tribunal in Triplerose referred to and quoted from the decision of the President of the Lands Tribunal in Cleary v Lakeside Developments Ltd [2011] UKUT 264 (LC). This was another case where the various leases in a building did not match, with the result that the management fees were paid for by the landlord and only two of the six leaseholders. The President said:

"27. … at present the cost[s] to the lessor of employing a manager are borne by the lessor, with contributions from two of the lessees. There is, however, nothing unsatisfactory about that in itself. It is the result of the contractual arrangements freely entered into between lessor and lessees. … There is, in my judgment, nothing arguably 'unsatisfactory' in the fact that two lessees pay a contribution to the lessor's costs of management and four do not. It simply reflects different contractual provisions that do not appear to cause any difficulty in interpretation or application. …

30 … I can see that there may be circumstances where the financial position of the lessor may make the absence of a lessee's covenant to pay for the cost of management unsatisfactory. This could be the case, for instance, where there was an RTM company with no other source of income. But evidence would be needed to show that there was a particular need in the circumstances of the case. In the present case, in my judgment, there was no evidence on which the LVT could conclude that the absence of such a provision was unsatisfactory."

> *16 What I take from those decisions is that* ***the Tribunal will consider whether the wording of the lease as it stands is clear, and whether the term sought to be varied is workable. If it is clear and workable then it is not unsatisfactory****. Obviously the question whether the bargain as it stands works in practice has to be considered on the basis of the evidence in each case. But s.35 does not enable the Tribunal to vary a lease on the basis that it imposes unequal burdens, or is expensive or inconvenient. It would be very strange if it did, in view of the law's general resistance to the temptation to interfere in or improve contractual arrangements freely made.*

19. To summarise Judge Cooke requires a Tribunal to decide if the wording of the lease is clear and workable. "If it is clear and workable it is not unsatisfactory." S.35 does not enable the Tribunal to vary a lease if it is inconvenient or expensive.

20. Accordingly, having heard and read the evidence and submissions from the landlord and having considered all of the copy deeds and documents emails and letters provided by the landlord, and the written submissions from the tenants and the evidence provided at the hearing from both parties, the Tribunal determines the variation issue as follows.

21. At the root of much of this dispute is the settlement Agreement between the parties dated 25 July 2016. This agreement was disclosed to the Tribunal. It was noted that the agreement should have been given effect by 25 October 2016. However, for various reasons it was apparent to the Tribunal that no agreement had been concluded pursuant to the terms of the 2016 agreement. However, at the hearing the landlord specifically confirmed acceptance of the terms of the agreement as did the tenants and both parties confirmed that they would now give effect to the terms of the settlement agreement. Furthermore, this meant that in effect the lease variations sought would be accepted pursuant to the terms of the agreement and in particular the terms of the first schedule to the agreement.

22. Pursuant to that acceptance by both parties of the need to conclude matters they both agreed to accept the terms of the lease variations as set out in this application which broadly followed the changes contemplated by the agreement of 2016. Notwithstanding this the Tribunal was able to determine that there was clearly a problem with the existing leases and that as a result the proposed variations were appropriate given the judicial guidance set out above. In effect the position was wholly unsatisfactory should there be no changes made to

the leases. Therefore, the Tribunal grants permission for the lease variations that were agreed to by the all parties at the time of the hearing.

23. The Tribunal then turned to the consideration of the second application. In that regard the tenants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the respondent in respect of service charges payable for services provided for the flats at the property and the liability to pay such service charge.

24. Clifton Villas is a terraced 1855 house, originally converted into 4 flats in 1992. The four original council tenants in Flats A, B, C and D applied for their 'right to buy' in 1992, and became leaseholders in 1999. The freehold of the property was acquired by the landlord. Since 2015 the leaseholder of D and E and Sole Director of the landlord has acted as an "unpaid manager" for the property The landlord says that a leasehold manager has been employed for 3 months in 2021, and a replacement is being sought. A temporary book keeper has been recently employed to sort out the late accounts.

25. As stated by the applicants at the hearing the application to the Tribunal was concerned with service charge issues that were listed as eight separate items and each will be considered by the Tribunal. The eight substantive service charge issues were: -

    a. Doors and windows in Flats A and B

    b. S.20 Consultation process

    c. Intercom system and electrical upgrade

    d. Fire safety works

    e. Late provision of accounts

    f. Flat E £5,000 contribution

    g. Cost of water tap in garden

    h. Standard of works

26. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

Decision

27. The Tribunal is required to consider whether the services were reasonably incurred and were they of a reasonable standard. To do this the Tribunal considered in detail written and oral evidence and the surrounding documentation as well as the oral submissions provided by both the parties at the time of the video hearing.

28. The Tribunal were required to consider service charges listed above The Tribunal will consider each in turn. The Tribunal would like to make it clear that the way the documentation was presented particularly by the respondent left a lot to be desired. There was no proper or completed Scott Schedule as required by directions and the invoices and receipts were presented in an unclear and confusing manner. Indeed, the Tribunal was regularly referred to a copy "cash book" in which to try to garner just was amounts were expended or claimed. Frankly this was very unsatisfactory and the Tribunal would ask the respondent to improve its record keeping and documentation when dealing with the service charge records and accounts as this would benefit the landlord and the tenant in their future dealings.

Doors and windows in Flats A and B

29. The applicants say this element of the dispute relates to the doors and windows of flats A and B. They assert that in the initial consultation process back in 2015 the Section 20 Notice: Stage 1: Initial Consultation Update specifically included: 'Repairs to all windows and external door as necessary to include parting and stop beads, replacement of draught proofing, easing sashes and sash cord replacement and cill and frame repairs by a specialist contract'. And 'We consider it necessary to carry out the works because these are required under the terms of the lease.' The applicants say that these repairs were removed from the tendered contract with no consultation or justification, and now ask the Tribunal to direct that these window and door repairs are now carried out.

30. The Tribunal were advised that reference to doors covered French windows at the property. The respondent said that only internal window overhauls were excluded from the schedule of works.

31. In the circumstances set out above the Tribunal took the view that in the context of the lease terms, the removal of internal window

overhauls by the respondent was a reasonable step to take and therefore declined to make an order/determination in this regard.

S.20 Consultation process

32. The element of the dispute raised by the applicants seemed to be a broad-based objection to delays arising out of historic s.20 notices and subsequent works. However, the Tribunal were not persuaded by the case set out by the applicants as the Tribunal could not identify any substantial breaches and therefore decline to make an order/determination in this regard.

Intercom system and electrical upgrade

33. The respondent caused intercom system works and electrical upgrade works to be carried out to the property. At the hearing it was problematic for the Tribunal to obtain a precise cost for these works. Ultimately it was noted that the respondent asserted that the electrical works amounted to £2910.85 and the intercom works amounted to £2566.81. In both cases the respondent confirmed that there had been no application to the Tribunal for dispensation and that there had been no consultation with the tenants.

34. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.

35. As has been noted previously there was no consultation and no application for dispensation. In these circumstances the Tribunal disallows both these amounts and limits the liability of the tenants to the statutory limit of £250 each.

Fire safety works

36. The respondent caused fire safety works to be carried out to the property. Again, at the hearing it was problematic for the Tribunal to obtain a precise cost for these works. In this instance the respondent confirmed that there had been no application to the Tribunal for dispensation and that there had been no consultation with the tenants.

37. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form. Should a landlord not comply with the correct consultation procedure, it is possible to obtain dispensation from compliance with these requirements by such an application as is this one before the Tribunal. Essentially the Tribunal have to be satisfied that it is reasonable to do so.

38. As has been noted previously there was no consultation and no application for dispensation. In these circumstances the Tribunal disallows the amounts for fire safety works and limits the liability of the tenants to the statutory limit of £250 each.

Late provision of accounts

39. The Tribunal took this element of the dispute to relate to potential breaches of s.20B of the Landlord and Tenant Act 1985. In essence, section 20B of the Act provides that if service charges were incurred more than 18 months before a demand for payment is served on the tenant then the tenant is not liable to pay; unless the tenant was notified in writing (within 18 months of the costs being incurred) that the costs have been incurred and that he or she would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge

40. The Tribunal could not see how this applied to the circumstances of the case when the applicants' representations at the time of the hearing were taken into consideration. However, part of the difficulty the Tribunal experienced was in relation to the figures supplied by the respondent which were somewhat difficult to follow.

41. In the circumstances set out above the Tribunal declined to make an order/determination in this regard.

Flat E £5,000 contribution

42. Under the terms of the Settlement Agreement from 2016 the leaseholder of Flat D /developer of Flat E/the respondent agreed to make a contribution of £5000.00 towards the cost of the cyclical decorations. The 2019/20 Service Charge and Reserve Fund Budget for 15 Clifton Villas (Appendix 5) served on 26.3.19 includes provision for that sum bringing the estimated budget less contribution to £35,500.00. That provision is absent from the 2020/21 budget issued

retrospectively on 24 March 2021 and the estimated total is £42,500.00. The 2021/22 also includes no contribution from Flat D and the 'estimated' budget has risen to £44,300.00. At the hearing the respondent made it completely clear and plain that this was a liability that the respondent accepted and would arrange for a payment without delay.

43. In the circumstances set out above the Tribunal took the view that the sum of £5000 was payable by the respondent.

Cost of water tap in garden

44. The respondent arranged for the provision of a water tap and a water supply to the garden at the property. Once again, the Tribunal found it very difficult to establish just how much had been expended for this item. The Tribunal expressed considerable sympathy for the tenants in trying to make sense of some of the accounting entries in relation to the service charges and specifically in relation to the water tap and supply. The Thames Water charge was at £6420, there appeared to be a repayment by Ms Wolff at £ £4011.45 with the balance in the service charge demand of £2407.55. Even at this final amount the Tribunal considered the amount to be unreasonable for the work effected to complete this installation. In the circumstances the Tribunal considers a reasonable charge to amount to £1500 in total and substitutes this amount for the amount charges.

45. Therefore, this Tribunal will allow a sum of £1500 as being the reasonable charge for this installation.

Standard of works

46. This dispute element was concerned with the works to the balcony at flat D. The landlord sought to claim the works in respect thereof as balcony repairs. The leaseholder applicants asserted that in fact the works were improvements. The sum at issue was eventually considered to amount to £4029. The Tribunal after a careful consideration of the evidence and in particular the photographic evidence was firmly of the view that the main thrust of the work was not to repair a flat roof but rather to establish a useable balcony for flat D. The Tribunal was not persuaded by the respondent's evidence and preferred the evidence advanced by the applicants. As a consequence, the Tribunal considered that the charge made was excessive and unreasonable. Some work could be attributable to making the roof sound but the Tribunal considered that the appropriate sum in this regard would be limited to 50% of the amount charged say in the sum of £2000.

47. Therefore, in the light of this the Tribunal decided to reduce this service charge to the total sum of £2000.

Application for a S.20C order

48. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 100% of the costs incurred by the tenants in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenants.

49. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim the costs as part of the service charge. The s.20C decision in this dispute gave the Tribunal an opportunity to ensure fair treatment as between landlord and tenants in circumstances where costs have been incurred by the landlord and that it would be just that the tenants should not have to pay them all.

50. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The Tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented. The Tribunal also took into account all oral and written submissions before it at the time of the hearing. While it noted that the director of the landlord had been unwell for a period of time it could not accept that this was sufficient cause for it to make allowance in this regard. The landlord faced with a period of illness could have and perhaps should have appointed a manager to deal with the service charge situation whilst the landlord director was out of action.

51. It was apparent to the Tribunal that there had been a history of disagreement between the parties, to put it at its simplest. The tenants have resorted to taking steps under legislation that exists to protect leaseholders by way of this application and others before it. In the light of the determinations made by this Tribunal the Tribunal has made this decision in regard to the 20C application.

Name:	Judge Professor Robert Abbey	**Date:**	22 November 2021

Appendix of relevant legislation and rules

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.

Landlord and Tenant Act 1987

Part IV Variation of Leases

Applications relating to flats

35 Application by party to lease for variation of lease.

(1)Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.
(2)The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—
(a)the repair or maintenance of—
(i)the flat in question, or
(ii)the building containing the flat, or
(iii)any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;
(b)the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);
(c)the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
(d)the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);
(e)the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;
(f)the computation of a service charge payable under the lease.
(g)such other matters as may be prescribed by regulations made by the Secretary of State.
(3)For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—
(a)factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
(b)other factors relating to the condition of any such common parts.
(3A)For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4)For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—
(a)it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and
(b)other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and
(c)the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.
(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002and Tribunal Procedure Rules shall make provision—
(a)for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and
(b)for enabling persons served with any such notice to be joined as parties to the proceedings.
(6)For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—
(a)the demised premises consist of or include three or more flats contained in the same building; or
(b)the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
(8)In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.
For the purposes of this section and sections 36 to 39, "appropriate tribunal" means—
(a)if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b)if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

36 Application by respondent for variation of other leases.

(1)Where an application ("the original application") is made under section 35 by any party to a lease, any other party to the lease may make an application to the tribunal asking it, in the event of its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application.
(2)Any lease so specified—
(a)must be a long lease of a flat under which the landlord is the same person as the landlord under the lease specified in the original application; but

(b)need not be a lease of a flat which is in the same building as the flat let under that lease, nor a lease drafted in terms identical to those of that lease.
(3)The grounds on which an application may be made under this section are—
(a)that each of the leases specified in the application fails to make satisfactory provision with respect to the matter or matters specified in the original application; and
(b)that, if any variation is effected in pursuance of the original application, it would be in the interests of the person making the application under this section, or in the interests of the other persons who are parties to the leases specified in that application, to have all of the leases in question (that is to say, the ones specified in that application together with the one specified in the original application) varied to the same effect.

37 Application by majority of parties for variation of leases.

(1)Subject to the following provisions of this section, an application may be made to the appropriate tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.
(2)Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.
(3)The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
(4)An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
(5)Any such application shall only be made if—
(a)in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or
(b)in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.
(6)For the purposes of subsection (5)—
(a)in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and
(b)the landlord shall also constitute one of the parties concerned.

Orders varying leases

38 Orders varying leases.

(1)If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2)If—
(a)an application under section 36 was made in connection with that application, and
(b)the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,
the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.
(3)If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunalwith respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.
(4)The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.
(5)If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.
(6) tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —
(a)that the variation would be likely substantially to prejudice—
(i)any respondent to the application, or
(ii)any person who is not a party to the application,
and that an award under subsection (10) would not afford him adequate compensation, or
(b)that for any other reason it would not be reasonable in the circumstances for the variation to be effected.
(7)A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—
(a)which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
(b)which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
(c)which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.
(8)A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9)A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.
(10)Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

ANNEX - RIGHTS OF APPEAL

1. 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.

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

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

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