10426

FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00HN/LSC/2014/0045**
Property	:	**Russell Mount, 28-30 Branksome Wood Road, Bournemouth, Dorset, BH4 9JN**
Applicant	:	**Russell Mount Management Co Ltd**
Representative	:	**Mark Preece of Horsey Lightly Fynn Solicitors**
Respondent	:	**The respective Lessees of Flats 1-56 Russell Mount**
Representative	:	**None**
Type of Application	:	**Sections 20C and 27A Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge N Jutton and Mr S Hodges BSc FRICS**
Date and Venue of Hearing	:	**17 September 2014, Court 8, Bournemouth County Court, Deansleigh Road, Bournemouth, Dorset, BH7 7DS**
Date of Decision	:	**24 September 2014**

DECISION

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1 **INTRODUCTION**

2 The Applicant Russell Mount Management Co Ltd is the owner of the freehold interest in the Property. The Respondent lessees are shareholders in the freehold company.

3 The Applicant seeks a determination under section 27A of the Landlord & Tenant Act 1985 (the 1985 Act) as to whether the costs of carrying out a scheme of works to replace window frames (and glass within) (the Works) at the Property can be recovered by the Applicant from the Respondents as part of service charges paid by the Respondents and whether the costs of the Works are reasonable.

4 Directions were made by the Tribunal on 16 May 2014 and at a Case Management Hearing on 6 June 2014. The directions provided that a Respondent lessee who wished to dispute or oppose the application should by 4pm on 11 July 2014 file and serve a written statement setting out their case.

5 In the event, the only Respondent who filed and served a statement of case was Mrs Lorraine McConnel (of Flat 38) who attended the hearing with her husband Mr Donald McConnel. Also in attendance at the hearing was Mr John Ridgeon who appeared on behalf of his daughter Amelia Ridgeon and her partner Lee Bosley, the lessees of Flat 14.

6 **Documents**

7 The documents before the Tribunal comprised a bundle of documents of 94 pages containing a representative lease, the Applicant's statement of case, a statement of case served and filed by Mrs McConnel and other documents. References to page numbers in this Decision are references to pages in the bundle.

8 **The Inspection**

9 The Tribunal attended at the Property on the morning of 17 September 2014. Present were the Applicant's Solicitor Mr Preece, Mr Taylor of the Managing Agents Bourne Estates Ltd, Mr Hawksworth (Flat 52) and Mr and Mrs McConnel (Flat 38).

10 The Property is a purpose-built block of 56 flats which it is understood was built in the early 1980s, with a car park below. The block is of red brick and concrete elevations with a flat roof.

11 The replacement of windows to the flats in the block was underway. Some had been completed, some were in the process of being replaced and works to others had yet to begin. The Tribunal was shown a replacement window which is an aluminium powder coated frame with triple 'A' glass and is double glazed. It has a trickle vent. It was pointed out to the Tribunal that while scaffolding was in place, the opportunity had been taken by the Applicant to carry out additional works such as re-pointing where required. Scaffold was in place at the time of the inspection on the southern and western elevations. The difference between a one bedroomed flat and a two bedroomed flat was pointed out. A two bedroomed flat

had two windows of 3 panels each, and a one bedroomed flat one window of 2 panels.

12 The Tribunal was shown an old window frame; one that had yet to be replaced. It was an aluminium frame with sliding windows which ran on runners. It was said on behalf of the Applicant that the sliding mechanism ie the runners wore out making it difficult to open and close the windows. In some cases individual lessees had replaced the runners from time to time. The Tribunal was referred to the black seal around the glass to the windows which it was said was perishing.

13 The Tribunal inspected the inside of Flat 52, Mr Hawksworth's flat. Some of the windows in the flat had been replaced and some had yet to be replaced. Mr Hawksworth said that one problem with the old single glazed windows was that they allowed significant condensation. He had historically had occasion to replace the wheels/rollers upon which the sliding windows operated.

14 The Tribunal was also shown a number of windows which had been removed and stacked up on the ground outside of the block. In particular, it was shown examples of the wheels which enabled the slide mechanism and which it was suggested had eroded to such an extent that it made it very difficult to open the windows.

15 **The Law**

16 The statutory provisions relevant to applications of this nature are to be found in sections 18, 19, 20C and 27A of the 1985. They provide as follows:

The 1985 Act

18 (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose –

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

19 (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

27A (1) *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.*

20C (1) *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 court, residential property tribunal or leasehold valuation tribunal, or the First-Tier Tribunal, or in connection with arbitration proceedings, 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.*

(2) *The application shall be made –…………………………………………*

(b)(a) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

17 **The Lease**

18 A sample of the lease appeared at pages 1-16 of the bundle. It is a lease dated 29 July 1983 for a term of 99 years from 25 March 1983. Certain leases had been varied by being extended and a copy of an extended lease was at pages 17-25 in the bundle. The variation did not vary the relevant provisions in the lease relating to maintenance and repairing obligations or payment of service charge and as such, was not relevant to this application.

19 At clause 5 of the lease, the lessee covenants to pay by way of service charge a 1/56th share of the costs and expenses and outgoings incurred by the lessor as set out in the 4th schedule.

20 The 4th schedule includes the following:

"1. *All costs and expenses incurred by the lessor for the purpose of complying or in connection with the fulfilment of its obligations under clause 6 hereof including without limiting the generality of the foregoing the costs and expenses described in the subsequent paragraphs of this schedule*".

21 Clause 10 of the 4th schedule refers to:

"All legal and other proper costs incurred by the Lessor

(a) in the running and management of the Building and the Estate and in the enforcement of the covenants conditions and regulations on the part of the Flat Owner and of the lessees of other demised parts of the Building in so far as the costs of enforcement are not recovered from the lessee in breach and ..."

22 Clause 6 sets out the lessor's covenants and includes at clause 6(9):

"That (subject to contribution and payment as hereinbefore provided and so far as the same are not liable to be repaired by the Flat Owner or by any of the several tenants of the flats on the Estate) the Lessor will maintain and keep in good and substantial repair and condition the main structure the foundations the roof and the down rainwater pipes from the roof and external main walls (including the outer walls of the Flat and the window frames thereof but not the doors therein nor the glass in the windows thereof nor the plaster on the walls thereof) the main entrance, hall, staircases and landings of the Building (including floor coverings thereof) and the communal doors and windows thereof the pipes and wires and the water (including any water storage tanks) drainage and other systems and services the lift and television aerial and any booster apparatus in the Estate (other than the pipes wires storage tanks and systems serving the Flat or any other flat alone) in good and substantial repair and condition except as regards damage caused by or resulting from any act or default of the Flat Owner or by any one of the several tenants of the flats of the Estate or the occupiers thereof making good all necessary renewals or replacements as may be required thereto ..."

23 The lease describes the property demised as the Flat. The 'Flat' is defined at clause 1(d) as including:

"... the window glass and doors giving access to the communal hall or the landing ..."

24 **The Applicant's Case**

24 Mr Preece submitted that the Works were required to be carried out and that the costs of the Works were costs that would be reasonably incurred. That the cost of the Works fell to be paid by the Respondent lessees as service charge payments pursuant to the terms of the lease for the reasons that had been more particularly set out in the Applicant's statement of case. He said this was an expensive project which was to be funded entirely by way of service charge contributions. That in all the circumstances the Applicant felt it prudent to make the application to the Tribunal in effect to ensure that funding would be available for the Works to go ahead. That a determination by the Tribunal would he suggested bring certainty.

25 Mr Preece said that he understood that it was not disputed that the Works were necessary. Indeed the need for the Works to be carried out had been an aspiration of many of the lessees for some time. The Applicant had followed the statutory consultation process required pursuant to section 20 of the 1985 Act and understood that there was no objection to the nature and quality of the Works. That the lease provided that lessees would each contribute 1/56th of the cost of such works as service charge contributions and there was no flexibility or discretion for the Applicant to depart from that.

26 Mr Preece said that the section 20 consultation process had been in respect of the aluminium powder coated frames that were being installed. Advice had been obtained as to whether UPVC frames would be more appropriate. The advice was that although UPVC frames might be more economical, they were considered unsuitable Upon being questioned by the Tribunal, he produced a copy of a letter from Mr S R Gregory Chartered Surveyor of Sibbett Gregory of Poole, Dorset. A copy of the letter was shown to Mr and Mrs McConnel. Mr Preece explained that Mr Gregory had been retained as the Project Manager for the works (following a selection process). He referred in particular to the first paragraph on the second page of the letter which states:

"We have considered the use of UPVC framing, which would probably be the most economical. However, UPVC frames are generally of a larger section than aluminium framed units, to give the appropriate strength and durability and these are considered unsuitable in this location, due to the overall change in appearance of the building, coupled with the fact that many of the smaller windows, such as ribbon louvres to some of the rear bathrooms, would effectively have little or no glazing in them by the time the size of the framing was taken into account. Therefore, replacement aluminium framed units are the only real choice".

27 Mr Preece explained that consideration had been given by the Applicant to carrying out the Works on a staged basis so as to split the cost. That advice had been obtained to the effect that if the work was done in two stages, additional scaffolding costs alone would be incurred of at least £30,000 plus VAT. Mr Hawksworth (Flat 42) said he understood that quotes for the cost of scaffolding had originally been obtained ranging from £30,000- 90,000. The contractor who quoted £30,000 went out of business and the Applicant had been able to persuade a contractor who had quoted £50,000 to reduce the quote to £30,000. He suggested therefore that in all probability the actual cost of erecting scaffolding in two stages, for example over a 2 year period, would give rise to an additional scaffolding cost of substantially more than £30,000.

28 It is the Applicant's case therefore that in all the circumstances it is not appropriate for the works to be carried out on a 'piecemeal basis'. That it would be more cost-efficient given not least the costs of scaffolding for the works to be carried out in one go.

29 The Applicant (in its statement of case) accepted that under the terms of the lease ordinarily the responsibility for the repair and maintenance of the glass in the window frames was that of the Respondent lessee. However, the Applicant submitted that the need to replace the window glass was an inevitable consequence of the replacement of window frames. That the need to replace the glass was so closely connected to the replacement window frames that it formed part of the repair and renewal of the window frames. In its statement of case, the Applicant made reference to the case of **Minja Properties Ltd v Cussins Property Group Plc** (1998) 30 EGLR 52. The lease in Minja Properties contained a similar provision to the lease in this case whereby the landlord covenanted *"to maintain and keep in good and tenantable repair the main walls, roof, roof beams, structural floors, structure, window frame (excluding glass) and the exterior of the building, sewers and drains serving the building"*.

30 The landlord in Minja Properties sought to refurbish the exterior of the Building including the replacement of existing rusted single glazed window frames with double glazed units. Certain tenants objected contending that the replacement of the existing window frames by double glazed units went beyond the meaning of *"repair"* in the landlord's repairing covenant. The Applicant in its statement of case referred to the judgment of Mr Justice Harman at page 55 paragraph M where the Judge stated *"... it will fall to the landlord who has damaged the glass to replace with new glass ..."*

31 Mr Preece described the Works as an evolving project. The Applicant he said had done its best to ensure that the Respondent lessees had been made aware of what was proposed and had been consulted throughout. They had been provided with copies of tender specifications and supporting documents. There had been much correspondence and meetings. The section 20 consultation process had been properly carried out and completed. The lowest quote received as part of that process had been the one accepted being a quote from a company called Bournemouth Glass & Glazing Co Ltd.

32 The total cost of the works he said was £328,104 inclusive of VAT which equated to £5,859 per flat (1/56th x £328,104).

33 Upon being questioned by the Tribunal, Mr Preece produced two letters from the Applicant to the Respondent lessees. The first dated 14 February 2014, the second 16 April 2014. Copies were shown to Mr and Mrs McConnel who confirmed they had seen these before. The letter of 14 February 2014 broke down the total cost of the works upon the basis of a quotation from Bournemouth Glass & Glazing Co Ltd which was for a total of £310,464 to which were added surveyor's fees, managing agent's fees, legal fees and planning application fees making a total of £331,131.

34 The letter of 16 April 2014 addressed a change to the specification following consultation with the lessees which allowed for the removal from the specification of a fanlight from one of the windows equating to a saving per flat of £54. The effect was to reduce the total cost of the works by £3,024 thus to £328,107.

35 Finally, in its statement of case the Applicant submitted that it would in any event be impractical and unsafe to replace the window frames without at the same time ensuring that the window glass was replaced and it suggested to act otherwise would most likely be a breach of the Applicant's statutory duties.

36 **The Respondent's Case**

37 Upon being questioned by the Tribunal, Mr Ridgeon explained that he was attending the hearing as a watching brief on behalf of the lessees of Flat 14 who were his daughter Amelia Ridgeon and her partner Lee Bosley. That the lessees of Flat 14 did, he believed, feel that the costs of the works were unreasonable. He was not in a position to produce any evidence to support that contention. He accepted that the lessees of Flat 14 had not filed a statement of case in accordance with directions made by the Tribunal (it is understood that Mr Bosley had suffered a serious injury and understandably his and Ms Ridgeon's attentions were focussed elsewhere). Mr Preece said that he had a file note which suggested that the lessees of Flat 14 had filed a response to the proceedings consenting to the application.

38 Mr and Mrs McConnel said they were content to rely upon their written statement of case (pages 67-86 in the bundle).

39 Mrs McConnel said that it was accepted that the section 20 consultation process had been properly applied. That she had not as part of that process or subsequently obtained alternative quotes for the Works. This had been she said a community-led project. That historically many lessees had replaced the runners in their windows at their own expense. She accepted that under the terms of her lease the lessee was responsible to pay 1/56th share of the cost of replacing the window frames. However she submitted, the responsibility pursuant to the terms of the lease for the repair and maintenance of the window glass was that of the individual lessees. She accepted that when the window frames were replaced, it was necessary at the same time to replace the glass with new glass. However, she said as an accounting exercise it should be possible to work out what element of the cost of the Works related to the

replacement of the glass. That cost could then be apportioned between lessees by reference to the number of windows in their respective flats. She was not able to say what the cost of the element of replacing the glass would be. She had she said been unable to obtain figures. Her 1/56th share of the cost of the works was £5,859 and originally she had taken a view that a reasonable sum to pay was £5,000 to cover the cost of replacing the frames leaving £859 for the cost of the glass. She said that was only her opinion as to the value of the glass. To address the matter on that basis she said would not be inconsistent with the terms of the lease. That by apportioning the cost of replacing the window glass by reference to the number of windows in each lessees flat the Applicant would be acting in a manner which was both fair and in accordance with the terms of the lease.

40 Mrs McConnel said that historically the Applicant had exercised some flexibility when applying terms of the lease, for example in relation to sub-letting and the allocation of garage spaces. That it would be inconsistent she said in the circumstances for it not to exercise such flexibility in relation to apportioning the cost of the Works as she suggested.

41 Upon being questioned by the Tribunal, Mrs McConnel said that although in her view it was not strictly necessary to replace the windows in her flat at this time, she did not dispute that it may be necessary to replace the windows in other flats in the building (in particular those that were facing the prevailing weather) and that in time it would no doubt be necessary to replace the windows in every flat. Further, she very fairly said that it was reasonable given what she had heard at the hearing as regards the additional scaffolding costs that would be incurred if the Works were done in stages for the Works to be carried out in one go. Upon being questioned further by the Tribunal she accepted that works to replace the windows may have been necessary at least in respect of certain flats for a number of years.

42 With reference to Mr and Mrs McConnel's statement of case, Mrs McConnel said at first that she was reluctant to say that there had been historic neglect in respect of the repair and maintenance of window frames on the part of the Applicant amounting to a breach of its repairing covenant. However, on consideration she felt that there had been historic neglect and she referred to page 71 in the bundle which was a letter from the Applicant to all lessees dated 26 October 2012. The letter stated that the Applicant had carried out some initial investigations into the cost of replacing the windows with UPVC double glazed sealed units and suggested potential costs of £4,000 per flat. Mr Preece reminded the Tribunal that the Works, for the reasons that he had stated, were for the replacement of window frames with aluminium powder coated frames which were more expensive than UPVC frames.

43 Mrs McConnel suggested that use should be made by the Applicant of the reserve fund. She understood that there was some £60,000 in the reserve fund.

44 Mr Preece in response said that that had been considered. However the Applicant felt it was not appropriate to use the reserve fund because that was being used to build up a fund to meet future expenses, in particular in relation to works to the roof. The roof to the property was a flat roof which was the

original roof. It was understood that the roof to a similar property nearby had been replaced recently at a cost in the region of £150,000. Further he said that works were also anticipated in relation to fire safety. That as such, the reserve fund was being earmarked by the Applicant for these future projects.

45 Mr Hawksworth said that historically individual flat owners had sought quotations for the cost of replacing window frames and had produced figures of £2,000-4,000. That had led he said to what he described as a 'rumour mill', that such figures were in fact quotations which was not the case.

46 In conclusion Mrs McConnel said that her main argument related to payment for the glass in the windows. That she said should be apportioned according to the number of windows per flat. That because the cost of replacing the glass under the terms of the lease was the responsibility of the individual lessees. That even though the Works (to include the replacement of the glass) were being carried out by the Applicant, as an accounting exercise payment should be arranged so that individual lessees would pay for the glass by reference to the number of windows in their individual flat. That she submitted would be consistent and in accordance with the terms of the lease.

47 **The Tribunal's Decision**

48 It is not disputed by the parties that the provisions of the lease are such that the Applicant lessor is not responsible for the repair, renewal or replacement of glass in the windows of the individual flats.

49 The Applicant says however that the replacement of the glass is an inevitable consequence of the replacing of the window frames. As Mr Preece put it at the hearing, the replacement of the glass was an inescapable requirement of replacing the window frames.

50 The Applicant makes reference to the decision in **Minja Properties Ltd v Cussins Property Group Plc** to the effect it contends that where a landlord by replacing window frames damages the glass within the frames, it falls to the landlord to replace the glass. That the Applicant says is consistent with its argument that replacement of the glass is part of the repair/replacement of the window frames.

51 Mr and Mrs McConnel, do not agree. They accept that replacement of the window frames necessitates replacement of the glass but contend that it should be possible to apportion the cost of the works between the cost of replacing the frames and the cost of replacing the glass. That as an accounting exercise the Applicant should charge individual lessees for the cost of glass replacement by reference to the number of windows in the individual lessee's flat. That they say would be consistent with the terms of the lease.

52 Mr and Mrs McConnell quite fairly and properly accept that the contribution that they must make by way of service charge to relevant repair/replacement costs is that determined by their lease which is a $1/56^{th}$ share of such costs notwithstanding the fact that there are less windows in their flat than a 2 bedroomed flat.

53 Mr and Mrs McConnel were not able to produce any figures breaking down the cost of the Works between the cost of replacing the window frames and the cost of replacing the glass within.

54 The Tribunal agrees that it is an inevitable consequence of replacing the window frames that the glass within will need replacing as well. That as such, as in Minja, the responsibility for the replacement of the glass rests with the Applicant landlord.

55 The replacement of the glass forms part of the work of replacing the frames. The Applicant is responsible for the repair and renewal of the window frames. In carrying out work to replace the window frames it must replace the glass within.

56 In the view of the Tribunal, the replacement of the glass flows directly from and is an inherent part of the work of replacing the window frames. The replacement of the glass is not divorced from the work to replace the window frames.

57 As such the replacement of glass in the windows is part of the work which the Applicant landlord covenants to carry out under the terms of the lease in the repair and renewal of the window frames. That as such, the total cost of the Works properly are relevant costs which are recoverable from the Respondent lessees as part of the service charge.

58 Mr and Mrs McConnel fairly accept, or at least do not dispute, that the replacement window frames to at least some of the flats in the building are necessary and that further in due course, given the passage of time, the replacement of all windows would in any event be necessary. They also accept that it is more cost-efficient for the Works to be carried out in one go rather than in stages by making better or more efficient use of scaffolding. The Tribunal agrees that is right.

59 The Tribunal also accepts the Applicant's submission that the reserve fund properly and reasonably has been retained to help fund future costs, not least the anticipated costs of repairs/replacement to the roof.

60 Having considered both the written and oral submissions made by both parties, the Tribunal determines that the cost of the Works are recoverable as service charge payments under the terms of the lease and that the total cost of the Works, £328,104 is reasonable and that the amount payable by each Respondent lessee flat owner is 1/56th of that sum, being £5,859 per flat.

61 **Section 20C Application**

62 Mr and Mrs McConnel seek an Order pursuant to section 20C of the 1985 Act that all or any of the costs incurred by the Applicant in connection with these proceedings are not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them.

63 The Tribunal asked Mr Preece to take it to the provisions in the lease which the Applicant contends allow the Applicant to recover the costs of legal representation before the Tribunal as service charge.

64 Mr Preece referred to paragraph 10(a) of the 4th schedule which is set out at paragraph 21 above. The Tribunal suggested to him that that provision related to the costs incurred by the lessor in seeking to enforce covenants on the part of the individual lessees where such costs could not be recovered from the individual lessee. Mr Preece contended that the clause could be broken down into two parts. The second part did indeed he said provide for the recovery of costs relating to the enforcement of covenants but the first part, being the first part of the first line of the sub-clause, simply addressed legal costs and other proper costs incurred by the Applicant *"in the running and management of the Building and the Estate"*. That he said was wide enough to cover the costs of legal representation in proceedings before the Tribunal.

65 Mr Preece made reference to the case of **Iperion Investments Corporation v Broadwalk House Residents Ltd** (1995) 46 EG 188. He handed up a copy to the Tribunal.

66 In Iperion he said the lease contained a provision which was very similar to clause 10(a) of the 4th schedule. It allowed for what were described as 'landlord's costs' to be recovered as service charges and that expression was defined to include costs incurred *"in the proper and reasonable management"* of the property. That in Iperion the Court had held such provision to be broad enough to cover the costs of legal proceedings (in that case proceedings relating to relief from forfeiture and for an injunction).

67 Mrs McConnel said that she accepted that clause 10(a) of the 4th schedule of the lease was sufficiently wide to cover the Applicant's costs of legal representation before the Tribunal. The Tribunal asked Mrs McConnel if she would like a short adjournment to consider the matter further, in particular the wording of clause 10(a) of the 4th schedule and the decision in Iperion. Mrs McConnel said she did not seek an adjournment.

68 **Mr and Mrs McConnel's Case**

69 Mr and Mrs McConnel said that these proceedings, or at least the hearing before the Tribunal, could have been avoided had there been better communication from the Applicant with them. In particular, had the Applicant answered letters that they had written to the Applicant in connection with the Works. In their statement of case, Mr and Mrs McConnel referred by way of example to a letter written to the Applicant dated 23 April 2014 to which they said there had been no response. Further the Applicant had not taken time to discuss the matter with them when the opportunity had arisen. For example following the conclusion of the Case Management Hearing on 6 June 2014.

70 **The Applicant's Case**

71 Mr Preece again explained that the purpose of the application, given the nature and size of the Works, was to obtain for the Applicant certainty as far as that could be obtained that funds would be available to it in the form of service

charge contributions to fund the Works. It was felt for that reason that it was prudent to make the application. In the event, only a very small number of lessees had taken issue with the Works and indeed by the date of the hearing it was only Mr and Mrs McConnel in practice who had objected. That the Applicant had done its best to correspond and communicate fully with all the lessees including holding meetings which were well attended. The Applicant had done its best to provide such information relating to the Works as possible. That even if by way of example the opportunity had been taken to discuss the Works with Mr and Mrs McConnel following the case management hearing, that would not have made any difference to the Applicant's decision to carry out the works and to seek to recover the costs of the Works including the costs of replacing glass in the window frames from the lessees. That in all the circumstances, the application was properly made and reasonably brought.

72 **The Tribunal's Decision**

73 The Tribunal takes note that the parties agree that the legal costs incurred by the Applicant in respect of these proceedings and in its attendance before the Tribunal may be recovered pursuant to the terms of the lease as part of the service charge. The Tribunal notes that such costs are referred to as part of the cost of the Works themselves (see the letter of 14 February 2014 from the Applicant to the lessees).

74 The Tribunal appreciates and understands Mr and Mrs McConnel's concerns that letters sent and other communications made by them may not have been responded to.

75 However, whether or not the Applicant had responded to Mr and Mrs McConnel, that would not in all probability have affected its decision to make this application. Given the cost of the Works and the importance of the Works, and the fact that the Applicant company's only source of funding is from service charge contributions, it was not unreasonable for the Applicant to make this application. Further, the Tribunal has found in favour of the Applicant by determining that the costs of the Works which have been incurred and are to be incurred are recoverable as service charge payments and are reasonable.

76 Having carefully considered the submissions of both parties, the Tribunal declines to make an Order pursuant to section 20C of the 1985 Act.

77 **Summary of the Tribunal's Decision**

78 The cost of the Works which are in the process of being incurred in the sum of £328,104 is reasonable and service charge will be payable in that regard by the lessee of each flat at the Property at the rate of 1/56th of that sum amounting to £5,859 per flat.

79 The Tribunal declines to make an Order pursuant to section 20C of the 1985 Act.

Dated this 24th day of September 2014

Judge N Jutton (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

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