Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Tribunal reference: LVT/0038/08/13

In the Matter of Flat 17, Heol y Glo, Tonna, Neath, SA11 3NJ

In the matter of sections 19, 20ZA and 27A Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements)(Wales) Regulations 2004

TRIBUNAL Mr. E.W. Paton (Chair)
Ms. R.Thomas (Surveyor)

Hearing date: 3rd December 2013

APPLICANT (Claimant) **NPT Homes Limited**

RESPONDENT (Defendant) **Mr. Richard Campbell (previously Harrington)**

ORDER

1. It is determined that the sums of:-

   i) £2624 in respect of roofing works carried out in January 2011; and
   ii) £500 in respect of re-rendering works carried out in June 2011 (and redone in June 2013)

   were reasonably incurred and are recoverable by the Applicant from the Respondent by way of service charge contribution.

2. It is further determined that the Applicant be granted dispensation from compliance with the requirements of the Service Charges (Consultation Requirements)(Wales) Regulations 2004 in relation to each of the items in paragraph 1 above.

DATED: 8th January 2014

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0038/08/13

IN THE MATTER OF: Flat 17, Heol Y Glo, Tonna, Neath

AND IN THE MATTER OF SECTIONS 19, 20 ZA and 27A OF THE LANDLORD AND TENANT ACT 1985

B E T W E E N:

NPT HOMES LIMITED

Applicant

-and-

RICHARD CAMPBELL (formerly HARRINGTON)

Respondent

DECISION

Before: Mr. E.W. Paton (Chair), Mrs. R. Thomas (Surveyor)

Sitting at Cefn Coed Colliery Museum, Crynant, Neath

On 3rd December 2013

For the Applicant: Ms. S. Jones (Morgan Cole LLP)

The Respondent appeared in person

1. This is the decision of the Tribunal, to which both of its members have contributed, and in which they concur.

2. The Applicant, NPT Homes Limited, is the freehold owner of a large amount of the former housing stock of Neath and Port Talbot Borough Council, following a large scale transfer to it on 4th March 2011. That stock includes a number of houses and flats in Tonna. The dates of some of the works relevant to these application straddled that transfer date, the relevant landlord prior to 4th March 2011 was the Council, and thereafter the Applicant, although many of the personnel involved were also transferred to the Applicant company. References to "the Applicant" should be taken, unless otherwise stated, also to be references to the Council as its immediate predecessor.

3. Numbers 17 and 19 Heol Y Glo, Tonna, are the only two flats (respectively, the first and ground floor flats) in the building relevant to this application. They are both former Council properties which were purchased some time ago under the statutory right to buy conferred by the Housing Acts 1980 and 1985. Mr. Campbell (who changed his name by deed poll from his previous surname Harrington) is the current owner and assignee of number 17. It was originally sold and let by a lease dated 8th February 1988 ("the lease") made between the then Neath Borough Council and Michael Ryan, for a term of 125 years from the date of the lease. The leasehold owner of number 19 is, we are told, a Ms. Beryl Parker. She is not a party to this application, has (as far as we are aware) no dispute with the Applicant and has paid all sums invoiced to her.

4. The lease contains a tenant's covenant to pay service charge, at clause 4(2), in these terms:

   "To pay to the Council [that expression includes successors in title to the reversion] upon demand without any deduction the further sums being a proportionate part of the reasonable expenses and outgoings incurred by the Council in the repair maintenance renewal and insurance of the building and in respect of the other matters specified in the Third Schedule hereto together with such sums as the Council or its Borough Treasurer may demand by way of reasonable provision for anticipated expenses and outgoings not yet incurred or paid for all such further sums (hereinafter called "the service charge") being subject to the terms and provisions contained in the Fourth Schedule hereto."

5. The Third Schedule contains thirteen categories of expenditure "in respect of which the Tenant is to pay a proportionate part by way of service charge". There is not space to set them all out but they include:

   (1) ".the cost of keeping in repair the structure and exterior of the flat and of the building (including.the foundations and roof thereof).and of making good any defect affecting that structure

   The Fourth Schedule sets out in more detail the mechanics for the calculation and recovery of service charge.

6. These applications concern disputed amounts of service charge for two items of significant work carried out to the building comprising numbers 17 and 19. In brief, these works were:-

   i) the complete replacement of the roof of the building. This work was carried out in December 2010 to January 2011. It was carried out as part of a larger programme of roofing works undertaken by the Applicant's chosen contractor, Glamorgan Services Limited. The total cost of that programme was £112,411, but the amount referable to the roof of numbers 17 and 19 was £5248. Each of the two lessees in the building (the Respondent and Ms. Beryl Parker) has each been charged 50% of that sum, so **£2624** each.

   ii) the extensive re-rendering of the whole of the "pine end" elevation of the building, as well as the area on the elevation where the entrance door of number 17 is situated. That work was initially carried out in June 2011. The contractor was one D&M Building Services. The cost of the work was £2011. It is common ground that it was initially carried out in an unsatisfactory manner and had to be redone, being finally completed (at no extra cost to the Applicant or the Respondent) in July 2013. The sum charged to both lessees is again 50% of that, so **£1005.50**.

7. Those sums set out in bold above are the sums in dispute. We are not concerned in this hearing with the mechanics of the demands for and payment or recovery of those sums. The issue is their recoverability in principle from the Respondent.

8. It is immediately apparent from the above figures that each of those items of work constituted "qualifying works" for the purpose of section 20 Landlord and Tenant Act 1985, since the contribution per lessee for each of them exceeded £250. It is therefore common ground that the landlord (who until 4th March 2011 was the Council, and thereafter was the Applicant) was obliged in each case to go through the steps prescribed by the Service Charges (Consultation Requirements) (Wales) Regulations 2004, SI 2004 No. 684 (W. 72) [hereafter "the Regulations"], and in this particular case the requirements set out in Schedule 4 Part 2 of those Regulations, these being "qualifying works" for which no public notice was required.

9. Compliance with the Regulations is mandatory if the landlord wishes to recover more than the statutory sum of £250 from a service charge-paying tenant in respect of the "qualifying works", save where the landlord applies for and obtains dispensation from their requirements under section 20ZA of the 1985 Act. Such dispensation can be sought prospectively or retrospectively.

10. In this case the Applicant, recognising at the very least that there might be doubt over whether it and its predecessor had fully complied with the Regulations in each case, has applied for such dispensation, to the extent that it is found that it failed to comply. The exercise of the Tribunal's discretion to grant dispensation has recently been the subject of authoritative guidance from the Supreme Court in *Daejan Investments Limited v. Benson* [2013] UKSC 14.

11. The Applicant made these applications on 21st August 2013, under sections 19, 20ZA and section 27A of the 1985 Act. Once the reasonableness of an item of service charge claimed is called into question, the burden is on the landlord to establish the reasonableness of both the decision to carry out the work, and the amount expended upon it. The Respondent disputes the reasonableness of the decisions to carry out the works, the amounts sought for the works, and the grant of dispensation from the requirements of the Regulations.

12. We therefore defined the issues, in our directions order of 18th September 2013, as follows:-

    "i) the reasonableness, of both the decision to carry out and the cost of, works to the roof of the property commenced in January 2011. The said works are stated to have cost £5248, and the proportion charged to the Respondent via service charge is £2624.

    ii) the reasonableness, of both the decision to carry out and the cost of, re-rendering works on the exterior of the property, commenced in June 2011 (although re-executed at no additional cost in 2013). The said works are stated to have cost £2011, and the proportion charged to the Respondent via service charge is £1005.50.

    iii) it being accepted that both of the above sets of works were "qualifying works" within the meaning of the Landlord and Tenant Act 1985, and that the Applicant did not in either case fully comply with the requirements of the Service Charges (Consultation Requirements) (Wales) Regulations 2004; whether the Tribunal should grant dispensation from such requirements in either or both cases, under section 20ZA of the Act, and if so on what terms."

    We will take each of these in turn.

    The building

13. The Respondent's property is the first floor flat in a detached 2 storey block, comprising of one flat on the ground floor and one flat on the first floor. The ground floor flat is accessed at the left hand side of the building and the first floor flat is accessed at the right hand side of the building. The entrance door to the first floor flat is within a purpose built ground floor extension which appears to incorporate an entrance hall and store for the exclusive use of the Respondent. This extension is linked to the adjoining block of flats being numbers 13 and 15 Heol Y Glo. The extension is set back from the front wall of the building.

14. The block appears to have been built in the interwar years and has brick walls with rendered elevations. The roof was originally clad in clay tiles and its structure is a simple dual pitch over the building with an apex end on each of the front and rear elevations. The main roof ended at the eaves with a UPVC fascia, supporting modern square profiled rainwater gutters, and the soffit underneath apparently of timber was in poor decorative appearance. The edge of the roof at the verges was trimmed in upvc profiled sections. There is a brick built chimney which is within the right hand roof pitch. The extension is also of masonry construction with rendered elevations and its roof, we were told, is clad in asbestos laid to a gentle slope running to the rear. The front wall of the extension, faces the highway, and incorporates the main entrance

door and a window serving the store, and is constructed with a parapet and capping.

It is to be noted that the right hand side elevation of the block was referred to by both parties as the "pine end". The Respondent had to pass the right hand pine end wall to reach his entrance door.

15. As stated, the property is located in Tonna, in the Neath valley to the east of the River Neath. It is within a local authority constructed estate with the other dwellings having been constructed at a similar time. The other dwellings are a mix of similar 2 storey detached blocks of flats, semidetached 2 storey blocks of flats, and other semi detached 2 storey houses.

16. At the inspection, the Tribunal viewed the property from the highway, and from the front path leading to the entrance door. No internal inspections were made. No intrusive examinations were made. The Tribunal also took the opportunity of looking at similar style properties located close by on the estate and the properties identified in the photographs which had been submitted with the paper evidence.

The roof

17. No specification for the roofing work on this particular building was provided to us. The Council produced in evidence on page 30 of their bundle, a generic specification for the whole contract entitled "Roofing contract 2010 – 2011 Phase 4 Contract Specification concrete interlocking tiles and associated works". This, in general terms included stripping off, new roof battens and felt, replacement concrete roof tiles, ridge vents, verge finishings, works to chimney stacks and renewal of lead soakers, works to valleys [none at this property] upgrade of roof insulation , allowances for gas vents, alterations to soil / vent stacks and protection of pre-existing rainwater goods. No reference was made to replacement of rainwater goods other than ".where the existing gutters are to remain in situ.". On external inspection, the Tribunal noted the roof works had been undertaken. No inspection of the interior roof space was made but there was no dispute between the parties with regard to the roof insulation and it was agreed further between the parties that the gutters and fascias along one elevation had been replaced when the works under the contract were carried out.

18. It is a stark fact in this application that we do not have a single photograph, survey report or piece of direct evidence about the condition of the roof of this building at the time that the decision to undertake the work was made, sometime in the summer or autumn of 2010. We have seen some photographs of other roofs of properties in the neighbourhood, with which some parallel was sought to be drawn, but we are concerned with this roof and not with any others.

19. The best evidence the Applicant could give, via Mr. Christopher Price (a contracts supervisor and manager previously with the Council and now with the Applicant) was that there had been an "independent survey" of properties in the area, in a stock condition survey "between 2003 and 2006", which identified this and other properties' roofs as in need of repair or renewal. He added that this ".data was verified by Mr. Graham Harris, Housing Maintenance Officer, and passed to me to include in the next programme of works". Neither any surveyor who originally reported on the condition of this roof, nor Mr. Harris, gave any evidence before us. Mr. Price had not

inspected the roof himself. He was reliant on the information of others, which he trusted. In evidence before us, he could not therefore give specific evidence of the particular defects, disrepair or other problems with this roof, save to speculate (as it seemed to us) that it may have been suffering from the 'nail fatigue' and rows of slipped tiles visible on other properties in the vicinity, and to make the general point that roof tiles of the type used on this roof had a limited life, and those in this roof had been over 50 years old by 2010. He accepted, when put to him by the Respondent, that roof was "watertight" but would not accept that it was "free from defects", albeit that he could not specify what the defects were in this case.

20. We found this state of affairs, and presentation of the evidence, somewhat unsatisfactory. It is unusual, to say the least, for a major landlord to bring an application of this nature without having any direct evidence, either in the form of photographs or evidence from the surveyors or workers who saw it, of the condition of that which was repaired, renewed or replaced.

21. Nevertheless, having considered the matter carefully, and the indirect evidence of Mr. Price, we are by a narrow margin satisfied that a reasonable decision was taken by the then landlord (the Council) in 2010, in good faith and on reliable information, to "renew" the roof of this building. While it is unsatisfactory not to have been able to see it for ourselves, or hear from the person/s who saw it, we are satisfied that Mr. Price was accustomed to act on accurate and reliable information about the condition of the many properties owned by the Council, and that this property would not have been included in the list of properties requiring such works if there was not a reasonable basis for doing so. Not all of the roofs of the properties in this area were renewed. There must have been some criteria applied to select roofs for inclusion in the programme of works. We are not persuaded that the inclusion of the roof of number 17/19 was for expediency or for the sake of spending money on what was otherwise a good roof.

22. In this respect, as Ms. Jones (solicitor for the Applicant) pointed out in her written and oral submissions, the Applicant is greatly assisted by the broad terms of clause 4(2) of the lease, including "renewal" as well as "repair", and which clause does not confine the service charge to be paid *only* to those matters spelled out in the Third Schedule. "Renewal" is a wider term than "repair". It includes, as we find here, a state of affairs in which a roof is not leaking water, or displaying specific and urgent symptoms of disrepair, but where it is a reasonable inference on account of its age, construction and expected lifespan that it may deteriorate in the near future. If a landlord, in good faith and on information from generally reliable officers, forms the view that a roof falls into this category, and an opportunity arises to renew it at a reasonable cost, then that may well be a reasonable decision to take. We find that the decision in this case was, by inference, a reasonable one. Resources then, as now, were scarce and we are satisfied that the Council would not 'throw money around' renewing roofs which were free of any present or potential defects or prospects of future deterioration.

23. We therefore find that the initial decision taken to renew the roof was a reasonable one. Had the recovery of service charge under the lease been limited just to matters of "repair" and "maintenance" we might have struggled in the absence of any specific evidence of the deterioration of the subject matter amounting to disrepair. As stated, however, we regard this as more of a case of long term "renewal" which the Council (the then landlord) took on reasonable information and grounds.

24. As for the amount of the sum expended on the works, the only comparative evidence we have to go on are the estimates set out in the Schedule attached to Mr. Price's statement. His evidence, which we accept, is that there were five estimates provided for the works in total. The Council went with the lowest estimate received, from Glamorgan Services. The amounts apportioned to the roof works on number 17/19 ranged from Glamorgan's £5248 to a figure of £9122 from another contractor. We accept that these are genuine estimates, figures and apportionments. The Respondent Mr. Campbell sought to cast doubt on whether any economies of scale had actually been achieved, and whether £5248 was really a reasonable price for a new roof on this building, but had adduced no evidence or figures of his own, save for anecdotal evidence that someone he had spoken to had suggested that it could have been done for £3000 or less.

25. We have no reason to doubt that £5248 is a reasonable figure. We have seen the building and the new roof for ourselves. There is no issue as to its quality or standard or workmanship. The Council or the Applicant do not have to obtain the lowest possible price, but only a reasonable one. We are satisfied that they did so.

26. It follows, therefore, that subject to the issue of the Regulations, and dispensation from any non-compliance with them, the sum of £2624 would otherwise be a reasonable one to recover for these roof works. We therefore turn now to that issue.

The Regulations and the "consultation" process for the roof works

27. We have already expressed our concerns about the somewhat scanty evidence in relation to the roof works. We have further concerns about the conduct of the process prescribed by section 20 LTA 1985 and the Regulations. The Regulations are not difficult to follow if read carefully. In this case, it is clear that the Council as the then landlord did not comply properly with the Regulations. We will go through the process step by step.

28. The first step under Schedule 4, Part 2 regulation 1 of the Regulations is the "Notice of Intention" to carry out works. The landlord must "give" this notice to each tenant. Regulations 1(2) and (3) provides that the Notice "shall":

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
(b) state the landlord's reasons for considering it necessary to carry out the proposed works;
(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify -

(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.
(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works."

29. The case of the Applicant (as successor to the then landlord, the Council) on compliance with this step rests on the letter of 12th October 2010. We will not set out that letter in full. It suffices to say that it complied with (a) and (b) above, the description being "the re-roofing of the block of flats" and the reason being "to prevent the deterioration of the existing roof". It complied with (c) (i) and (ii), giving an address and requiring that observations be delivered there within the relevant period of "30 days beginning with the date of this notice". It also invited the tenant to propose a person from whom to obtain an estimate in that period [regulation 2(3) above].

30. Where it was defective was in not specifying a date on which the relevant period ended, as required by reg. 1(2)(iii). As we have said on other occasions, that is not a trifling and bureaucratic requirement:

> "The purpose of this additional requirement is in our view clear. There is always scope for confusion arising from notices, and indeed Tribunal or Court orders, if a period for taking a specified step is left simply in the form "within *x* days" or "within *x* days from/of/after the date of this notice/order etc.". If expressed in that fashion, is the time to be reckoned from the date the notice bears, the date it was sent or the date it was received and came to the attention of the recipient? If the word "from" is used, does that include or exclude that initial date? That is why it is always best to give a clear deadline date, so there is no room for doubt in the mind of the recipient."

(decision ref. 1025929, LVT Wales, *Re. 9 Linton Court, Abersychan*, 17/12/12, paragraph 23)

31. It is common ground that Mr. Campbell, the Respondent, received that letter but made no representations, objections or observations in response at that time. His evidence seemed to be that he thought, himself or through conversations with colleagues at the Council, that there was not much point in doing so as it would go ahead in any event.

32. The next requirement of the Regulations is the so-called "paragraph (b) statement" under reg. 4(5) to 4(9). We will not set it out in full. In broad terms, the landlord has to "obtain estimates for the carrying out of the works" [4(5)(a)], supply to each tenant a statement giving the amounts quoted in at least two of the estimates [4(5)(b)(i)], provide a summary of any observations made in response to the initial Notice of Intention [4(5)(b)(ii) – there were in fact no observations made at all in this case], make the estimates available for inspection [4(5)(c)], specify the place and time where they may be inspected [4(10)(a)], and invite observations to be made on those estimates, to a specified address, during a relevant period, and (again) specifying the date on which that relevant period for observations ends [4(10)(c)].

33. In this case, the Applicant's sole case on compliance with this step could only have been based on what was described as the "second consultation letter" of 17th November 2010. Wisely, Ms. Jones did not seek seriously to argue that this letter amounted to compliance with the regulations summarised above. It did not come close to such compliance. It was in essence an announcement that the landlord "had entered into a contract" with Glamorgan Services Limited to carry out the works, for £5248, and that the works would commence in "around Jan 2011". It then rather oddly sought to "invite observations in relation to the proposal", giving an address, a period of 30 days but once again no date on which that period ended.

34. So, as is obvious from that summary, this letter did not supply the estimates obtained, or even just two of them, or allow inspection of and observations on those estimates. The "date on which the period ends" error was the least of its flaws. The Council had, as this letter shows, jumped the gun and chosen a contractor before hearing from the tenants or even showing them comparative figures for the estimates.

35. While Mr. Price's evidence was that the contract was not finally placed with Glamorgan Services until December, and that there was a "pre-contract meeting" with it on 5th December 2010, the very fact that he then says that there was an "agreed start date of 15th December 2010" and that the works had previously been announced as commencing in January 2011 demonstrates that (subject to any last minute crisis) the decision had been taken and the contract effectively placed by the date of that second letter.

36. There was therefore non-compliance with the Regulations at both the initial "notice of intention" stage and the "paragraph (b) statement" stage. If the Applicant wishes to recover more than £250 from the Respondent in respect of these works, it must obtain dispensation under section 20ZA. We therefore now turn to that issue.

section 20 ZA dispensation

37. Section 20 ZA(1) provides that:

" Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

38. As stated above, the Supreme Court in the *Daejan Investments* case cited above, reversing (by a majority) the decision of the Court of Appeal, has provided clear guidance for Tribunals considering applications under section 20 ZA. The main points, mostly from the opinion of Lord Neuberger, are as follows:

i) section 20ZA(1) is in broad terms, and confers a broad discretion. The chief purpose of all these sections is to protect tenants from paying for unnecessary, defective or unreasonably expensive services

ii) The key issue therefore "must be the extent, if any, to which the tenants were prejudiced. by the failure of the landlord to comply with the Requirements"

iii) This is preferable to expressing views on the gravity or otherwise of the landlord's breach, on which views could differ and which does not necessarily affect whether the tenant suffered any prejudice

iv) So in a case where the "extent, quality and cost of the works were in no way affected" by the landlord's failure to comply:

"..I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason)"

v) The Regulations are not an end in themselves, or a "punitive or exemplary exercise"

vi) Dispensation can be granted on terms e.g. as to a reduced sum being payable to reflect any actual prejudice caused, and as to costs of the landlord's section 20ZA application (by analogy with forfeiture): one suggestion made by Lord Neuberger was that in an appropriate case the Tribunal could make payment of the tenant's costs of the application a condition of dispensation being granted (paras. 59-61)

vii) as to establishing prejudice, while legal burden overall under section 20ZA is on the landlord, there is a "factual burden" on T to come up with some evidence of relevant prejudice, as to which the Tribunal should be "sympathetic": if "credible evidence" of prejudice (e.g. what they would have said if properly consulted, and what difference that would have made), the landlord has to rebut it.

39. So the focus has now shifted from the fact of non-compliance, and the gravity or otherwise of that non-compliance, to the prejudice suffered by the tenant as a result. As the decision in *Daejan* makes clear, the tenant bears at least an evidential burden on this, but if some credible evidence of actual prejudice is raised, the landlord then has to rebut it or otherwise establish that any prejudice is not so great that dispensation should not be granted.

40. It is not for this Tribunal to question the decision in *Daejan*, and it is its duty to follow it. One difficulty, however, which many tenants will face, and which Mr. Campbell faces here, is that the Regulations still leave the final decision on the works in the hands of the landlord. On one view, despite the complexity of some of the provisions, the substantive obligations imposed by the Regulations on the landlord, and the rights they give the tenant, are fairly modest. The tenant is first simply to be notified of intended works and the reason for them. S/he can make "observations" on them, to which the landlord need only "have regard", but the tenant has no veto over the works. S/he can nominate a contractor, but the landlord is not obliged to choose that contractor. The landlord has to give the figures of at least two estimates, and make the estimates available for inspection, but again all the tenant can do is make "observations" on them. The landlord decides in the end who does the work.

41. This being so, it will frequently be open to a landlord to say that there has been no "prejudice" in the end to the tenant through non-compliance with the Regulations in some respect or other, because the landlord always had the final choice of the contractor. Particularly in cases, as here, where the landlord chose the lowest estimate, it can say 'In the end, my non-compliance did not make a significant difference. Even if the tenant had made a whole host of observations to us, and pored over the estimates at length when given the opportunity to do so, we would still have chosen the lowest estimate as we did and gone ahead with the works.' The Applicant did make a submission along those lines in this case.

42. The Respondent's case on prejudice, in relation to the roofing works, are really just those points numbered 9 and 10 in his case summary. Point number 9 is a complaint about the Applicant's failure to provide him with the specification for the works, but as the Applicant points out, there is no duty under the Regulations to provide such specification. A quite brief general description of the works in the initial Notice is all the detail required. Point number 10 argues that the failure to provide the Respondent with details of the estimates "prejudiced the Respondent in commenting or having meaningful discussion", and the opportunity to "question the detail in the estimate", despite the fact that the Applicant chose the lowest tender. He made one point about a small difference in the prices shown on the Schedule as between very similar properties, but the Applicant's evidence was that there was nothing unusual about this, and that it would have been based on the estimated roof area together with any ancillary works required.

43. While we have sympathy for the Respondent, and find the Applicant's non-compliance with the Regulations unsatisfactory in many respects, it is not our role to punish the Applicant for its failures, as *Daejan* makes clear. Ultimately, we are not satisfied that any real prejudice was caused to the Respondent by the various aspects of non-compliance with the Regulations. As the Applicant pointed out, the Respondent did receive the (non-compliant) letters and was aware that the works were proposed, but did not in fact make any observations or complaints about the works in the time before they were carried out. It is therefore difficult to find that if he had received more detailed letters with comparisons of estimates (and showing the lowest estimate, which was eventually chosen) he would have altered his response significantly.

44. We therefore grant the Applicant dispensation from its non-compliance with the Regulations in relation to the roofing works, so that in principle the full sum of £2624 for those works is recoverable from the Respondent by way of service charge.

The re-rendering work

45. The sequence of events resulting in these works was slightly different from that in relation to the roof. These works originated in a complaint made by the Respondent. We find (and accept his evidence) that on some unspecified date, but we think in about March or April 2011, he notified the Applicant that a section of render on the 'pine end' wall of the building, of about 8 by 4 feet in area, had become damaged and detached, and was therefore potentially dangerous. After receiving no response, he made a second call. The render had severely "blown out" by the side of the door, and he pulled off a section of it himself. He made a third call. When he came home later

that day, some work had commenced, and someone had hacked off substantially more render.

46. What actually happened is not wholly clear, not least because the actual personnel or contractors used by the Applicant did not give evidence. There appears to have been an inspection on the site by someone on behalf of the Applicant, who concluded that the problem with the rendering was more extensive than the subject of the immediate complaint. A decision was taken that the whole of the pine end wall, and also the lower elevation on which the door to no. 17 is situated, would have to be re-rendered in the same pebble dashed finish. Mr. Jaime Greig, a Housing Maintenance Officer for the Applicant, gave evidence that "the tradesman Peter Davies [told him] that the existing render was in such poor condition that it required further attention". Peter Davies provided a short statement but did not then give this evidence before us. Nor is there is any photographic or other record of the condition of the render at this time.

47. The matter was then passed to Mr. Greig. His evidence was that he then recognised that the extent of the works, and their likely cost, would engage the Regulations. His evidence was that it was he who drafted three successive letters of 7th April 2011, 9th May 2011 and 9th June 2011 (dealt with in more detail below), sent out in the name of the head of Property and Maintenance Gareth John, which constituted the "consultation" required for these works.

48. As far as we can ascertain, the works were initially commenced and carried out from about 13th June 2011. A scaffold went up on that side of the building. We find, as was his evidence, that the Respondent was surprised at the extent of the work being carried out. He came home from work to find that the work had commenced and there was a large pile of hacked-off render in his front garden.

49. The contractor carrying out the work was D&M Building Services. We have seen, from the internal figures and schedules of the Applicant, that D&M provided the lowest estimate for the work, of £2011. It is common ground, and does not give rise to further specific issues in this application, that their initial work proved unsatisfactory to the Applicant, and that at some length the work had to be redone, eventually only being satisfactorily completed in July 2013. No extra charge was raised for that.

50. We could see the extent of the rendering work on our site visit. No obvious issue as to its quality arises. There was some mention made of the slight difference in colour between the new render and the older render on other walls, but this appeared to us to be mainly a factor of the newness of the render rather than an unreasonable choice of a different colour. The finished work certainly has a more attractive appearance than would a 'patch' repair using plain render.

51. The Respondent has been invoiced for the sum of £1005.50 for this work, being 50% of its cost to the Applicant. The same questions arise in relation to these works as were considered above in relation to the roof works, namely:-

    - the reasonableness of the decision to undertake the works
    - the reasonableness of their eventual cost
    - compliance, or otherwise, with the Regulations
    - dispensation from any non-compliance with the Regulations

    The decision to undertake more extensive works

52. The evidence and basis for the decision to re-render a whole side of the building, and a further area around the door for good measure, is shrouded in obscurity. As stated, the employee of the Applicant who effectively took that decision has not given evidence. There is no photographic, survey or other evidence of the condition of the whole of the render on this wall at the relevant time. It is common ground, at least, that *some* work had to be done, since it was the Respondent himself who reported the defect to part of the render. The issue is, however, the eventual large extent of what was done. That is a question of degree and detail on which, we consider, it behoves the Applicant to adduce some direct evidence.

53. While we were prepared to grant the Applicant some leeway in relation to the decision over the roof, that was more in the nature of a single decision that a whole roof of a uniform age and condition had to be renewed. We were prepared to accept that the Applicant reasonably formed the view that such renewal was required, on the basis of the age of the roof and its likely potential for deterioration.

54. In this case, there is no evidence, and not really even a theory, as to why the whole wall was done, when a limited 'patch repair' is what was originally reported and requested. We might in a different case have heard direct, or even expert evidence about how when one piece was taken off, the adjacent piece followed, and so on, up to a point where the whole wall rendering was rendered unstable, perhaps in the manner of a giant jigsaw puzzle. In this case we can only speculate on who formed the view, and why, that even the rendering at the upper level of the building above the flat roof of the entrance and storage area had to be completely stripped off and replaced.

55. The Respondent's evidence was that he was surprised and puzzled at the extent of the work done. We accept his evidence and share his puzzlement. We are not able to find, therefore, that the decision to undertake the re-rendering of the whole of the pine end wall, and the door area in addition, was reasonable.

56. We then face the difficulty that it was clearly reasonable to carry out *some* such work, as the Respondent himself had requested. We do not have detailed quotations or evidence about how much just the limited area identified by the Respondent would have cost to re-render. There was, however, some evidence visible in photographs that the render on the door elevation of number 17 was defective, although the Respondent's view was that this was an inherent defect in it rather than a pressing or dangerous matter of disrepair.

57. We are prepared, therefore, to accept that *some* rendering beyond just the limited patch initially identified by the Respondent was in need of repair or renewal, and that it was reasonable to some extent for the Applicant to decide to go further in the works undertaken. We were not provided with detailed measurements and proportions for the various areas of the walls, but doing the best that we can, we are prepared to allow the Applicant approximately 50% of the cost of the total work done as work which it reasonably decided was required as a matter of repair or renewal. That is very much a broad brush figure, reflecting the lack of evidence on the point, but we consider that this is reasonable and fair to both parties. We would round that down to a round sum of £1000 of which the Respondent's 50% proportion would then be £500.

58. We do not consider that £1000 would be an unreasonable cost for work of this extent, and did not receive any evidence of comparable estimates from the Respondent which might have persuaded us otherwise.

59. That leaves, once again, the issues of compliance with the Regulations, and dispensation from the consequences of any non-compliance. Our findings above mean that this only amounts to the difference between the Applicant recovering £500 or £250 for these works, but since it was an issue in the case it is right that we deal with it.

Non-compliance with the Regulations

60. We can deal with this a little more briefly in relation to these works. We find that, despite the dating error on the file copy of it produced subsequently which dated it as "9th May 2011", Mr. Greig did create a letter on 7th April 2011, a copy of which appears as the first exhibit to his statement.

61. That letter, if served, would have been a reasonable effort at compliance with the Regulations on the initial Notice of Intention. It described the works, gave a reason for them, gave an address for observations, and even specified a date by which such observations should be sent (7th May 2011).

62. The Respondent's evidence was, however, that he did not receive this letter. Mr. Greig believed that it would have been sent in the ordinary course of post, but there was no direct evidence of posting or delivery. We accept the Respondent's evidence on this point. He accepted that he received the letters in relation to the roofing, but not these letters. We find that this was consistent with his surprise at the speed and extent of the works when they were carried out, and that he did not even know when they were about to begin.

63. If service is an issue in any case, and there is no deemed service by reason of any statutory or contractual provision, the party relying on service of a particular document has to prove it on the balance of probabilities. We are not satisfied of this matter in this case. It is quite possible that this draft letter was never actually sent, or went astray in the post. We do not have to speculate on what happened, because as stated we believe the Respondent's evidence that he did not in fact receive it.

64. A second letter was drafted, and said to have been sent, on 9th May 2011. This was an unfortunate document, and Ms. Jones for the Applicant sensibly made very few claims for it as something which complied with or was even relevant to the Regulations. It did refer to those Regulations, but then identified the intended programme of works as "renewal of fascia soffits and rainwater goods". That appears simply to have been a mistaken importation of the contents of some quite different letter. It then added that ""The works will be carried out at the estimated costs" and did quote the figure of £1005.50 which would later be invoiced to the Respondent for the rendering work, but this was useless in the light of the misdescription of the works themselves. Even if the correct works had been referred to, it is not clear to us what this letter was supposed to be in the context of the Regulations: it was not in any respect a "paragraph (b) statement" following on from the initial notice of intention.

65. The Respondent again said that he did not receive this letter. We again accept that evidence and so find. In the case of this letter, however, that finding hardly matters, as the letter would have been of no consequence in relation to compliance with the Regulations.

66. The third letter exhibited was one of 9th June 2011. The relevance of this letter to the Regulations process is also questionable, since on the Applicant's evidence (through Mr. Greig) the decision had already been taken to give the contract to D&M Building Services at their quoted price of £2011, there had been a pre-contract meeting with them the previous day (8th June 2011) and the work was due to start on 13th June 2011.

67. This letter is also something of a puzzle. The draft copy supplied to us suggests on its face that it was to be accompanied by a "Schedule" setting out various estimates. Yet the document following this in the exhibit to Mr. Greig's statement was simply a table showing D&M Building Services as the only contractor providing an estimate. Mr. Greig and his colleagues appear to have sought to retrieve the information about other estimates they received (as an email chain from May 2013, also exhibited to his statement, shows) but this was more than two years after the event. A Mr. Tom Davies, a purchasing officer employed by the Applicant, emailed Mr. Greig a table showing 4 estimates, of which D&M's was the lowest, but we are not satisfied that this table was attached to an original letter sent to the Respondent in June 2011. Mr. Greig's evidence on the attachments to the various letters was a little unclear. At one point in his evidence he sought to claim that the estimates had been attached to the *second* letter (dated 9th May 2011) described above, possibly because he thought that might help the Applicant's case on that letter being some form of "paragraph (b) statement", but he then resiled from that and thought that the estimates were attached to this third letter.

68. In the light of this, the Respondent's evidence that he never received this letter, and the evidence that the Applicant has been seeking two years after the event to piece together what may have happened and what may have been sent, we are therefore not satisfied that this letter was actually sent to the Respondent on 9th June 2011 and received by him, accompanied by a list of estimates or otherwise. This again accords with his evidence that the commencement of the work, and its scale, came as a surprise to him.

69. Even if this letter had been sent, it would not have constituted compliance with the Regulations. On its face it appears to be an attempted "paragraph (b) statement", but even it could be construed as having "ma[d]e all the estimates available for inspection", and although it did specify a date (9th July 2011) by which observations were to be sent, it was clearly something of an afterthought and not a genuine process. As stated, the contract had already been placed and the works were about to begin.

70. This, then, was another somewhat shambolic attempt by the Applicant to follow the process prescribed in the Regulations. On the issue of dispensation, however, we are (following *Daejan*) not concerned with punishing the landlord according to the severity of its breaches of the Regulations. The issue is, as set out above, what prejudice this caused to the Respondent.

71. Given our findings that the rendering works were only reasonably undertaken to the extent of 50% of the work that was actually done, the issue is what prejudice the Respondent suffered from being deprived of the Regulations process in relation to works of that extent. We are not satisfied that he suffered significant prejudice in this respect. The points he would have made, and did subsequently make, were as to the extent of the works required, which have already been reflected in our decision as to reasonableness. Again, some of the points he makes on prejudice are concerned with not seeing a "specification" for the works, and more vaguely that not seeing the letters had the effect of "denying dialogue" over the works, which are not matters to which the Regulations entitle him.

72. The most he would, or could have seen had the Regulations process been carried out correctly would have been a list of the estimate figures, and the facility to inspect those estimates if indeed they had been provided in any fuller form than this. As stated earlier, the ultimate decision to carry out the work remained that of the Applicant. As we have found, we are not satisfied on the evidence (or rather, lack of evidence) that it was reasonable to carry out the full extent of rendering actually completed. That is essentially the point that the Respondent would have made had he been consulted, so he has already partly 'won' on that point. We do not consider it correct, in addition to that, to refuse the Applicant dispensation under section 20 ZA for the balance of the work which (by definition) we have found was reasonably carried out.

73. Some mention was made in some of the Respondent's documents of concerns over the quality and colour of the new render, and possibly an argument that exposure of the underlying wall following the initial 'stripping off' of damaged render was something which itself caused more damage, but we do not have sufficient evidence to make specific findings to that effect. As stated, on our own physical inspection, the completed work appears to us to be of reasonable quality.

Conclusion

74. We therefore decide that the Applicant is entitled in principle to recover the following sums from the Respondent:-

    i) £2624 in respect of the roofing works; and

    ii) £500 in respect of the rendering works.

    We also grant dispensation under section 20 ZA of the Landlord and Tenant Act 1985 for the Applicant's failure to comply with the Regulations in relation to each of these matters.

75. We do not grant that dispensation subject to any express conditions, as to costs or anything else, but will say this. The Applicant has (and referred to this in its case summary), an initial entitlement under paragraph 12 of the Third Schedule of the lease to recover via service charge certain legal costs incurred in "proceedings" in which it is in "dispute" with the tenant. If it sought to recover such costs following this case, the Respondent would have the right (and has the right generally) to apply under section 20C Landlord and Tenant Act 1985 for an order that the landlord should not be entitled to recover certain legal costs via service charge to which the lease would otherwise entitle it.

76. That would be a separate issue, and application, for another day. The Tribunal hearing that application would have to consider this decision, and also consider the fact that it was because of the Applicant's (or its predecessor's) non-compliance with the Regulations that it had to apply under section 20ZA for dispensation if it was to recover more than the statutory minimum for these works. The Applicant in turn might argue that the Respondent could have accepted the position sooner and not contested the application.

77. Those are all typical arguments which might be raised on a section 20C application, which has not yet been made. It is matter first for the Applicant whether it does seek to recover any of its costs in that way, and then a matter for the Respondent whether he makes any section 20C application. Apart from section 20C, we have very limited powers to make direct costs orders as a Tribunal (which are not engaged here, as there is no question of any party having acted in an unreasonable, frivolous or vexatious manner), and as stated we are not attaching any condition as to payment or otherwise of costs to our decision to grant dispensation.

78. For these reasons we make an order in the terms attached to this decision.

Dated this 8th Day of January 2014

CHAIRMAN