FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HP/LSC/2020/0099
Property	**:**	Flat 4, Forsyte Shades, 82 Lilliput Road, Poole, BH14 8LA
Applicants	**:**	Jennifer Shulman and Harvey Shulman
Representative	**:**	Russell James - Counsel
Respondent	**:**	Forstye Shades Management Company Limited
Representative	**:**	Not represented
Type of Application	**:**	(1) Liability to pay and reasonableness of service charges section 27A Landlord and Tenant Act 1985. (2) Liability to pay and reasonableness of administration charge, schedule 11 to the Commonhold and Leasehold Reform Act 2002.
Tribunal Members	**:**	Judge N Jutton and Mr Colin Davies FRICS
Date of Hearing	**:**	10.30 am Friday 12 February 2021 by video enabled hearing
Date of Decision	**:**	17 February 2021

DECISION

---

1 Forsyte Shades, 82 Lilliput Road, Poole is a purpose-built block of residential flats comprising 21 flats. The Applicants are the lessees of Flat 4. The Applicants make an Application for a determination as to whether or not a demand made on them by the Respondent dated 22 August 2019 for a sum of £3905.25 (the Balcony Works Levy) is payable by them as a service charge and if so, how much should be paid. The Applicants also seek a determination as to whether or not an administration charge in the sum of £120 demanded of them by the Respondent on 9 July 2020 is payable by them and if so, is it reasonable in amount.

2 **Documents**

3 The documents before the Tribunal comprised a Bundle of 371 pages which included the Applicants' Application, the Applicants' Lease, a Licence for alterations dated 5 May 2010, Directions made by the Tribunal, Statements of Case made by both parties, historic correspondence between the parties, the advice of Counsel obtained by the Respondent dated 8 October 1990, aWitness Statement of Mr Brian Wait and copy legal authorities. References to page numbers in this Decision are references to page numbers in the Bundle.

4 **The Issues**

5 At the start of the hearing, it was agreed between the parties that the issues to be determined were as follows:

i Whether liability to pay for the Balcony Works levy had been agreed or admitted by the Applicants. (The First Issue).

ii Whether the Balcony Works Levy is payable as a service charge. (The Second Issue).

iii If the Balcony Works Levy is payable as a service charge, how much should be paid by the Applicants. (The Third Issue).

iv Is the sum of £120 demanded from the Applicants by the Respondent on 9 July 2020 payable as an administration charge and if so, is it reasonable in amount. (The Fourth Issue).

v Should the Tribunal make an Order pursuant to section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the Respondent in connection with these 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 Applicants. (The Fifth Issue)

vi Should the Tribunal make an Order reducing or extinguishing any liability of the Applicants to pay an administration charge in respect of litigation costs incurred by the Respondent in connection with these proceedings. (The Sixth Issue)

6 The Law

7 The relevant statutory provisions are to be found in sections 18, 19, 20C and 27A of the Landlord and Tenant Act 1985 (the 1985 Act) and in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). 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

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 –.....*

(ba) 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.*

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.*

The 2002 Act

1 (1) *In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) .....

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) .....

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

3 *.....*

4 (1) *A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) *A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*

(4) *Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.*

5 (1) *An application may be made to [the appropriate tribunal] for a determination whether an administration charge is payable and, if it is, as to—*

(a) *the person by whom it is payable,*

(b) *the person to whom it is payable,*

(c) *the amount which is payable,*

(d) *the date at or by which it is payable, and*

(e) *the manner in which it is payable.*

(2) *Sub-paragraph (1) applies whether or not any payment has been made.*

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

(4) *No application under sub-paragraph (1) may be made in respect of a matter which—*

(a) *has been agreed or admitted by the tenant,*

(b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*

(c) *has been the subject of determination by a court, or*

(d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

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

(6) *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

5A (1) *A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.*

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

The table referred to includes proceedings before this Tribunal.

8 **The Lease**

9 A copy of the Applicants' Lease appears at pages 24-46 of the Bundle. There have been subsequent variations to the Lease but none of the variations change the provisions relevant to this Application.

10 The demised premises are described in Part 1 of the Schedule to the Lease as:

"ALL THAT self-contained Flat numbered 4 at Forsyte Shades Lilliput Road Canford Cliffs Poole Dorset situate on the first floor of the Block TOGETHER with the Garage number 12A as the same are shown coloured pink on the plan attached hereto (including the front door garage door glass in windows and window frames and the balcony and including also one-half in depth of the floors and ceilings and one-half in width of the walls

separating any part of the demised premises from any other flat penthouse or common parts comprised in the Block but excluding the land on which the said Garage is built and its foundations)".

11 By clause 3(5) the Lessee covenants to:

"Contribute and pay on demand to the Company one twentyfirst part of all costs charges and expenses (including any VAT) and liabilities from time to time incurred or estimated by the Company likely to be incurred in

(a) performing and carrying out the obligations and each of them under Part VI of the said Schedule in connection with the Property and …

The covenants on behalf of the Respondent management company include a covenant contained in Part VI of the Schedule in the following terms:

"(1) The Company will whenever reasonably necessary or whenever the Vendor its Agents or Surveyors for the time being consider it reasonably necessary and in any event within 21 days of any Notice served under clause 8 of this Deed maintain repair redecorate replace and renew:

(a) the external walls and structure and in particular the main load bearing walls and foundations roof storage tanks gutters and rainwater pipes of the Property and the boundary fences thereof and all plant machinery or installations not the responsibility of a Lessee …

12 By clause 2(5) the Lessee covenants:

"To pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) incurred by the Vendor for the purpose of or incidental to the preparation and service of a Notice under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court".

13 **The First Issue**

14 The Tribunal heard evidence from Mr Brian Wait, a former Director of Forsyte Shades Management Company Limited. There is a copy of an unsigned Statement by Mr Wait at pages 297 and 298 of the Bundle and a signed copy dated 5 November 2020 at pages 370 and 371. The Tribunal also heard evidence from one of the Applicants, Mrs Jennifer Shulman.

15 Mr Wait said that a meeting took place with the Applicants in the Applicants flat approximately 3 years ago. That the meeting took place prior to the service of the section 20 Notice dated 24 May 2018 (page 117). He said that he did not take any notes or minutes of the meeting. That it was a meeting held he said to explain the proposed works to be carried out to the balcony, of Flat 4. To explain that certain parts of the work would be paid for by the Applicants. To give an indication of the amount that the Respondent would expect the Applicants to pay. That based he said upon historic contributions made by Lessees of other flats in respect of similar works. Mr Wait said that he did not discuss the terms of the Lease or any other legal documents. That he did not show the Applicants a tender analysis that he had in relation to works carried out to the balcony to Flat 11. He confirmed that there was no tender for the cost of the proposed works to the balcony to Flat 4 available at the time of the meeting; that there were no figures for the proposed works. That the only figures that he could give the Applicants were in the realms of the figures for Flat 11. That they were an indication of what the Respondent would expect the Applicants to pay. Upon being questioned, Mr Wait agreed that the only specific item of work referred to in his Statement was the floor tiles. That he said had stuck in his mind. But that he said was not the only part of the discussion. That he had furnished details of the work that was carried out to Flat 11 to the Applicants.

16 Mr Wait said that the Applicants understood what they would have to pay for. He suggested that they could subsequently have had a look at the section 20 documents and if need be, examine the specifications at the offices of the Managing Agents. Mr Wait accepted that he had not shown the Applicants at the meeting a specification for the proposed works nor at that time did he know the exact cost of the works and the amount which the Applicants would be asked to pay. Mr Wait said it was not the case that at the end of the meeting he told the Applicants that he would let them have details of the provisions in the Lease or in any other document which made the Applicants liable for the cost of the proposed works.

17 Mrs Shulman said the Applicants had not agreed to pay for the works. The meeting she understood was a preliminary meeting. That she had not been forewarned about the meeting. That at the meeting Mr Wait had explained that works were necessary in the nature of waterproofing to the balcony. That he said that in previous cases the lessees of the flat concerned had contributed to the cost of such works. That in this case the Applicants may have to make a contribution but he was not able to say how much that would be. That Mr Wait said he would come back to the Applicants once he had further details. In the event, Mrs Shulman said that Mr Wait never did. That when the Applicants received the section 20 Notice, they thought that resolved matters. That they would be paying the same as the other lessees in accordance with the terms of their Lease. There was, Mrs Shulman said, no

agreement at the meeting or subsequently on the part of the Applicants to pay the Balcony Works Levy.

18 Mrs Shulman said that the Applicants had replaced the floor tiles to the balcony at their own expense. They had accepted that those were their responsibility. In answer to a question from the Tribunal, Mrs Shulman said that there had been no breakdown of the items which made up the Balcony Works Levy until much later.

19 Mr James submitted that there was no finalised agreement. On the evidence it was clear that there was no certainty as to cost or indeed to the extent of the works required. That there was in short no complete agreement.

20 That section 27A of the 1985 Act allowed an Application to be made to the Tribunal for a determination as to whether a service charge was payable. That the proviso in section 27A(4) that a lessee cannot make an Application if the matter has been agreed or admitted by them can only arise if such an agreement or admission is made after the service charge demand is made, because only then does it become payable. That the meeting between the Applicants and Mr Wait took place before the service charge demand of 22 August 2019 which contains the Balcony Works Levy. That the demand could not be payable prior to that date. That it couldn't have been agreed before that date.

21 That further, the service charge demand did not comply with the provisions of section 21B of the 1985 Act. That the prescribed information in the form of a summary of tenants' rights and obligations that was with the service charge demand was out of date. It was not in the form required as at the date of the demand by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. In particular, paragraph 6 of that summary was out of date. That accordingly pursuant to section 21B(3) of the 1985 Act the Applicants were entitled to withhold payment in any event and thus the demand was not payable.

22 **The Tribunal's Decision**

23 Section 27A of the 1985 Act allows an Application to be made to the Tribunal for a determination as to whether or not a service charge is payable and if so, as to by whom it is payable, to whom it is payable, the amount payable, the date by which it should be paid and the manner in which it is payable.

24 Sub-section 4 provides however, that an Application in that regard may not be made in respect of a matter which has been agreed or admitted by the tenant.

25 The issue for the Tribunal is therefore whether or not the Balcony Works Levy contained in the service charge demand dated 22 August 2019 (page 59) had been for the purposes of section 27A(4)(a) agreed or admitted by the Applicants. If it had, then the Tribunal has no jurisdiction to entertain this Application.

26 Upon the basis of the evidence before it both written and oral the Tribunal is satisfied that on the balance of probabilities no admission or agreement was made by the Applicants. That not least because there was insufficient information available to the Applicants at the meeting as regards the specification of the works which subsequently made up the Balcony Works Levy or as to the cost of those works. As Mr James put it, there could not have been a complete agreement.

27 Further, the demand of 22 August 2019 post-dates the meeting which took place between the Applicants and Mr Wait. At the date of that meeting (the exact date is not known), there had been no service charge demand made in respect of the Balcony Works Levy. As such the demand was not at that date, payable. For the purpose of section 27A(4)(a) of the 1985 Act, the Applicants could not have agreed or admitted that it was payable.

28 In addition, a lessee is entitled to withhold payment if a demand is not accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. The information required to be provided by those Regulations was amended in 2013. Paragraph 6 of the required statement of summary of tenants' rights and obligations was amended to take account of changes in the law in respect of the powers of this Tribunal and the Upper Tribunal to award costs. The statement on the back of the service charge demand of 22 August 2019 does not contain that amendment. In short, the statement contained thereon of summary of tenants' rights and obligations is out of date. Accordingly, pursuant to section 21B of the 1985 Act, the Applicants were entitled to withhold payment of the sums demanded.

29 For those reasons, the Tribunal is satisfied that there was not nor has there been an agreement or admission made by the Applicants for the purposes of section 27A(4)(a) of the 1985 Act and the Tribunal accordingly retains jurisdiction to address the Application.

30 **The Second Issue**

31 **The Applicants' Case**

32 The Applicants say that the Respondent can only recover the Balcony Works Levy if it forms part of the service charge. That if it does form part of the service charge, then pursuant to the terms of the Lease the amount payable by the Applicants is 1/21st of that sum, that is £185.97. That if the works were not in the nature of works which would be subject to a service charge, they were not payable at all by the Applicants. That it is for the Respondent to identify the provision or provisions in the Lease upon which it relies in support of its contention that the Applicants are liable to pay the full amount of the Balcony Works Levy. That is a question that had been put, the Applicants say, to the Respondent many times in correspondence but to which there has been no reply or certainly no satisfactory reply

33 The Applicants say that it is not disputed that the works which were required to the balcony of Flat 4 were works of a structural nature and were the responsibility of the Respondent to undertake pursuant to Part VI of the Schedule to the Lease.

34 The works which make up the Balcony Works Levy consisted of removing floor tiles from the balcony floor laid by the Applicants' predecessors in title, removing rendering to access the balcony structure and reinstating and works to lead flashing to provide a damp proofing to the brick walls where the flashing meets the balcony floor. That the Respondent could not carry out the structural repair work to the balcony without also carrying out those works. In short, it had to carry out those works (certainly the first two items) in order to gain access to that part of the balcony where structural repair work was required.

35 As such, they are works, the Applicants say which constitute consequential damage to the demised premises necessary in order to carry out the structural repair work to the balcony. That in carrying out such structural repairs, the Respondent is obliged to make good any consequential damage to the Applicants' decorations; to make good decorative damage.

36 The Applicants refer to **McGreal v Wake** (1984) 13 HLR 107. Sir John Donaldson MR stated:

"We consider that the landlord's obligation to effect repairs must carry with it an obligation to make good any consequential damage to decorations".

37 The Applicants also refer to extracts from 'Dilapidations – The Modern Law and Practice' (6th edition) at paragraph 22-51 and to 'Woodfall: Landlord and Tenant' at paragraph 13.045 in support of their contention that where a landlord is responsible for carrying out structural repairs and in doing so causes damage to the lessee's demised premises, the landlord is responsible to make good such damage, the cost of which will form part of the cost of the

overall structural repair work. That, the Applicants say, is the case here. It was analogous Mr James said to a landlord carrying out works to electrical wiring which by necessity involved damage to internal walls which damage would then form part of the works that the landlord would be required to rectify.

38 That is consistent, the Applicants say, with the fact that their understanding that the elements of the work that constituted the Balcony Works Levy were included within those identified during the consultation carried out for the purpose of section 20 of the 1985 Act. That the works of removing floor tiles, removing and reinstating rendering and replacing/remedying lead flashing were all an integral part of the works of structural repair being carried out by the Respondent. That they form part of the works required to be carried out by the Respondent within the scope of Part VI of the Schedule to the Lease.

39 Further and/or in the alternative, the Applicants say that render is a form of plaster. That plaster forms part of the structure of the building. The Applicants refer to **Grand v Gill** (2011) EWCA Civ 554 in which the Court albeit in the context of tenancies of less than 7 years and the provisions of section 11 of the 1985 Act held that the plaster was part of the structure. That as the Respondent was responsible for works of repair to the structure it was responsible for works of removal and reinstatement of the rendering. That such work falls within the Respondent's repairing obligations under Part VI of the Schedule to the Lease and as such, the amount payable by the Applicants as service charge pursuant to the terms of the Lease, is 1/21st of the sum claimed.

40 **The Respondent's Case**

41 Mr Pointer for the Respondent said that there was an historical precedent at the property. That where similar structural repairs had been required to the balconies of other flats, the lessee in each case had agreed to pay and had paid a sum equivalent to the full Balcony Works Levy. That in turn had reduced the amount of service charge paid by the other lessees.

42 Mr Pointer referred to a sketch in the form of a section of the balcony at page 290. That tiles he said laid by the Applicants' predecessors had covered the structure of the balcony. That in order to access the structure to carry out repairs, it had always been understood, Mr Pointer said, that the lessee concerned would be required to remove the tiles and to reinstate them at his or her own cost. That the Respondent in effect was frustrated in carrying out its repairing obligations by virtue of the fact that a lessee had added another layer to the balcony.

43 Mr Pointer referred to clause 3(11) of the Lease. That clause he said was a requirement placed upon the lessee to permit the Respondent and its representatives and workmen to enter into the demised premises or any part of the demised premises for the purpose of carrying out works of repair. That the addition of tiles to the floor of the balcony and of rendering effectively served to prevent the Respondent from gaining access in order to carry out works of repair to the structure.

44 Upon completion of the works of repair to the balcony of Flat 4, the Respondent had, Mr Pointer said, completed external decoration in the form of paintwork.

45 As to the authorities cited by the Applicants, Mr Pointer sought to distinguish those upon the basis, he said, that they related to properties in their existing, unaltered condition. That this case was different he suggested because the rendering and the floor tiles had been applied subsequently by the lessee. He accepted upon being questioned by the Tribunal that the Applicant's predecessors in title were entitled to apply the rendering albeit that, in his view, in doing so that had prejudiced the Respondent's access to the structure of the balcony.

46 In its written submissions, the Respondent relies upon a written Advice obtained from Counsel, Mr Simon Lillington, dated 8 October 1990 (page 291-296). Mr Lillington advised that in his opinion the balcony floor formed part of the structure of the property. He referred to tiles that had been laid over the balcony floor by the lessee. He advised that where a lessee had chosen to lay his own tiles over existing tiles, that those new tiles would be in the way of the lessor in carrying out works of repair to the structure. As he put it, *"the tenant has chosen to cover up the lessor's structure with tiles of his choice"*. Mr Lillington advised that in such circumstances the tenant should be given the opportunity of removing his tiles before work commenced. That he would then be permitted to re-lay the tiles after the works had been completed. Mr Lillington did not think it right that the lessor be expected to reinstate after repairs had been completed, tiles to a higher standard than those which the premises originally demised. To that extent, he appears to disagree with the advice of another Barrister, Mr Michael Norman, to whom he makes reference (Mr Norman's advice was not before the Tribunal). It appears as far as the Tribunal can ascertain, that Mr Norman advised that the Respondent's responsibility was not limited to replacing tiles with those which were the same as those that had been in place at the start of the Lease because the works would involve interference with the tenant's fittings and therefore should be made good as part of the works.

47 With reference to clause 3(11) of the Lease, Mr James in response said that the clause was an important clause concerned with allowing people to have

access to the property in order to allow the Respondent to comply with its repairing obligations. He referred to the wording at the end of the clause which provides that in exercising the right of access, the lessor would make good all damage thereby occasioned. That was, he said, reinforced in Part III of the Schedule to the Lease at (A)2 which retained a power to the Respondent to enter onto the demised premises for the purpose of performing the covenants on its part, and making good any damage thereby caused. In short, that meant Mr James said, that the Respondent was obliged to reinstate whatever damage was caused.

48 **The Tribunal's Decision**

49 The balcony to Flat 4 is part of the demised premises (Part I of the Schedule to the Lease). Works carried out by a previous lessee to replace the balcony balustrade were authorised by a Licence dated 5 May 2010 (pages 46-51). It is understood those works include the application of rendering. In the view of the Tribunal, the application of floor tiles by a lessee to the balcony is a matter for the lessee. They do not require authorisation under the terms of the Lease from the Respondent.

50 It is accepted between the parties that the works that were required to the balcony of Flat 4 were works of a structural nature. That they were the responsibility under Part VI of the Schedule to the Lease of the Respondent to carry out. In order to carry out those works, the Respondent had to remove the floor tiles and take up the rendering. That part of the consequential works to the structure included work to the lead flashing to provide damp proofing to the brick walls where the flashing meets the balcony floor. In the view of the Tribunal, all of the works which make up the Balcony Works Levy are works which are entirely consequential upon the works of structural repair for which the Respondent is responsible. They in essence form part and parcel of the works of repair which the Respondent was obliged to carry out. It matters not that previous lessees of Flat 4 had laid floor tiles onto the balcony. That was a matter for them. Applying **McGreal v Wake** the works carried out by the Respondent which make up the Balcony Works Levy were works required to make good damage, whether decorative or otherwise, by necessity caused to the Applicants' flat as part of the structural repair work to the balcony.

51 The Applicants say that further and/or in the alternative, that the works that make up the Balcony Works Levy were works to the structure. The Applicants make reference to the Court of Appeal Decision in **Grand v Gill** (2011) EWCA Civ 554 where in the context of a short lease, internal plaster work was found to form part of the structure of a house. Each case is dependent upon its own facts. In **Re The Estate of Valbourg Cecile Goodman Irvine v Moran** (1992) 24 HLR 1 in addressing the meaning of

the word 'structure', the Court concluded that the term 'structure of the dwelling house' had a more limited meaning than the overall building itself. That it consisted of those elements of the overall dwelling house which gave it its essential appearance, stability and shape. The term was not the Court said, limited to those parts of the dwelling house which were load-bearing.

52 In **Irvine v Moran**, on the facts of that case, the court held that internal plaster work did not form part of the structure.

53 However, as the Tribunal has determined that the works that make up the Balcony Works Levy are works which are occasioned by structural repair work and are, for the reasons stated, the responsibility of the Respondent to carry out as part of those works, it need not and does not address the issue in this case of whether or not the works that make up the Balcony Works Levy are works in themselves works to the structure of the building.

54 **The Third Issue**

55 Having determined that the works that make up the Balcony Works Levy form part of the service charge that may be recovered by the Respondent from the Applicants, the Tribunal turns to the amount payable by the Applicants.

56 The Lease provides as set out above, that the contribution to be paid by the Applicants is 1/21st of the costs and expenses incurred by the Respondent in carrying out its repairing obligations (provided they are reasonably incurred). Accordingly, the Tribunal determines the amount that may be recovered by the Respondent from the Applicants by way of service charge in relation to the Balcony Works Levy is 1/21st of the sum of £3,905.25 namely £185.97.

57 **The Fourth Issue**

58 The Respondent seeks to recover the sum of £120 for alleged administration charges incurred for seeking to recover arrears of service charges from the Applicants. The administration charge demand is at page 61. It is dated 9 July 2020.

59 **The Applicants' Case**

60 The Applicants say firstly that there is no basis in the Lease for recovery of such a charge. The Applicants are not helped by a reference in the demand to 'clause 18(06) of the Lease'. There is no such clause.

61 The Applicants considered whether or not clause 2(5) of the Lease would allow the Respondent to recover such a charge. Clause 2(5) is a covenant on

the part of the Lessee which is set out above. It allows the Lessor to recover costs, charges and expenses incurred *"for the purpose of or incidental to the preparation and service of a notice under sections 146 and 147 of the Law of Property Act 1925"*. The clause does not, the Applicants say, assist the Respondent in the absence of any evidence of consideration or preparation of a notice pursuant to section 146 of the Law of Property Act 1925 or evidence that the administration charge claimed was incidental to the same. The Applicants refer to the Decision of the Upper Tribunal in **Barrett v Robinson** (2014) UKUT 1.

62 Secondly, the Applicants say, that the administration charge raised is a cost allegedly incurred by the Respondent in seeking to recover alleged arrears of service charges of £4500. Those are included on the service charge demand dated 22 August 2019 (pages 59 and 60). As set out above, the Applicants say that the summary of tenant's rights and obligations provided with that service charge demand is incorrect, specifically paragraph 6. It does not comply with Regulation 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. That as such, the Applicants are entitled pursuant to section 21B(3) of the 1985 Act to withhold payment of the service charge. That further, pursuant to section 21B(4) of the 1985 Act, any provision that there may be in the Lease relating to non-payment or late payment of the service charge does not have effect.

63 **The Respondent's Case**

64 Mr Jordan Franklyn addressed the Tribunal. He said that the administration charge was raised for non-payment of service charges and was payable pursuant to the provisions of Schedule 11 of the 2002 Act. Upon being questioned by the Tribunal, he volunteered that there was no clause that he was aware of in the Lease that would allow recovery of the administration charge claimed.

65 **The Tribunal's Decision**

66 The Respondent can only recover an administration charge if the terms of the Lease allow it to do so. The Tribunal is satisfied that there are no provisions in the Lease which allow recovery of the administration charge claimed. Although not raised by the Respondent, the Tribunal agrees with the Applicants that clause 2(5) of the Lease does not assist the Respondent, that not least by reason of a lack of evidence to show that the charge was raised for the purposes of or incidental to the service of a notice prepared for the purpose of section 146 of the Law of Property Act 1925. Schedule 11 of the 2002 Act does not help the Respondent. Schedule 11 does not provide an authority for the Respondent to raise an administration charge. It contains a mechanism by which a lessee may apply to this Tribunal for a determination

as to whether or not a variable administration charge is payable and if so, reasonable in amount.

67 **The Fifth and Sixth Issues**

68 Upon being questioned by the Tribunal, Mr Pointer very reasonably confirmed that the Respondent had not incurred costs in relation to these proceedings and therefore would not be seeking to recover any costs from the Applicants as part of any future demand for service charges or as payment of administration charges.

69 In the circumstances, the Tribunal determines, for the avoidance of doubt, pursuant to section 20C of the 1995 Act, that any costs that have been incurred by the Respondent in connection with these 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 Applicants.

70 Similarly, in all the circumstances, the Tribunal determines, for the avoidance of doubt, that the Applicants are not liable to pay an administration charge in respect of any costs incurred by the Respondent in connection with these proceedings.

71 **Summary of Tribunal's Decision**

72 **The First Issue**

73 The Tribunal determines that the Applicants did not admit or agree to pay for the works that constitute the Balcony Works Levy.

74 **The Second Issue**

75 The Tribunal determines that the sum of £3905.25 which makes up the Balcony Works Levy is payable as a service charge.

76 **The Third Issue**

77 The Tribunal determines that of the said sum of £3905.25, the amount which the Applicants are liable to pay as part of their service charge is £185.97.

76 **The Fourth Issue**

77 The Tribunal determines that the administration charge of £120 dated 9 July 2020 is not payable by the Applicants.

78 **The Fifth Issue**

79 The Tribunal determines that any costs that have been incurred by the Respondent in connection with these 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 Applicants.

80 **The Sixth Issue**

81 The Tribunal determines that the Applicants are not liable to pay an administration charge in respect of any costs incurred by the Respondent in connection with these proceedings.

Dated this 17th day of February 2021

Judge N P Jutton

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.