FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LIS/2017/0057**
Property	:	**Various flats at Chadborn Close, Turton Close and Donald Hall Road, Brighton BN2**
Applicant	:	**Brighton and Hove City Council (landlord)**
Representative	:	**Mr Simon Allison of counsel, instructed by Irwin Mitchell plc**
Respondents	:	**Various lessees**
Representation	:	**(1) Various lessees represented by Ms Amanda Gourlay of counsel, Direct Professional Access** **(2) Mr Duncan Campbell (Flat 178 Allamanda, Donald Hall Road, Brighton BN2 5DJ), in person** **(3) Mr Nicholas Dawe and Ms Laura Timperley (Flat 192 Allamanda, Donald Hall Road, Brighton BN2 5DJ), in person** **(4) Other non-participating lessees**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge M Loveday (Chairman)** **Mr N Robinson FRICS** **Mr R Wilkey FRICS**
Date and venue of Hearing	:	**24-25 September 2018** **Mercure Brighton Seafront Hotel, 149 Kings Road, Brighton BN1 2PP**
Date of Decision	:	**18 October 2018**

DECISION

Background

1. This is an application dated 28 November 2017 to determine liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985"). The matter relates to major works undertaken by the local authority Applicant to 5 blocks of flats known at Chadborn Close, Turton Close and Donald Hall Road, Brighton BN2. The Application sought a determination in relation to charges allegedly payable by lessees of some 39 flats. There are also applications by certain lessees under LTA 1985 s.20C.

2. Directions were given on 5 December 2017 which provided that "Any Respondent lessee who wishes to participate in the proceedings must return a completed Acknowledgement to the Tribunal by 7 January 2018" and that "Only those lessees who return an Acknowledgement will receive further communications from the Tribunal." On 13 March 2018, further directions were given, which included provision for the "participating Respondents" to file Statements of Case.

3. The Respondents essentially fall into four categories:
    a. A group of 20 lessees known collectively as 'Justice for Tenants Phase 2' who filed a joint Statement of Case dated 22 June 2018, and who were represented at the hearing by counsel, Ms Amanda Gourlay.
    b. Mr Duncan Campbell (Flat 178 Allamanda, Donald Hall Road, Brighton BN2 5DJ), who responded to the invitation from the Tribunal to state he was a participant, but who did not file a Statement of Case. Mr Campbell attended the hearing in person.
    c. Mr Nicholas Dawe and Ms Laura Timperley (Flat 192 Allamanda, Donald Hall Road, Brighton BN2 5DJ), who filed a Statement of Case dated 28 May 2018. Mr Dawe also attended the hearing in person.
    d. The remaining lessees. None stated that they wished to participate in the application in response to the Directions given

on 5 December 2017. They have not filed Statements of Case and did not attend the hearing.

4. The Tribunal inspected the premises on the morning of 24 September 2018 and the hearing was due to commence at lunchtime the same day. However, counsel for the Applicant and the 'Justice for Tenants' lessees sought time to discuss matters, and counsel eventually indicated that agreement had been reached about the liability of those lessees to contribute towards the cost of the major works. The application relating to the remaining lessees was adjourned to the following day. On the second day, counsel for the Applicant and Mr Campbell indicated that a further agreement had been reached in respect of Flat 178 Allamanda, Donald Hall Road. The Tribunal was handed copies of written agreements which recorded that the service charges had been agreed (although the amount of the sums payable was confidential) and that an order should be made under LTA 1985 s.20C. The hearing therefore proceeded on the second day in relation to Flat 192 Allamanda, Donald Hall Road, Brighton BN2 5DJ (with Mr Dawe appearing in person) and in relation to the remaining 'non-participating' respondents.

5. In its determination below, the Tribunal deals separately with each of the above four groups of respondents.

The premises and inspection

6. The five blocks of flats are known as:
   (a) Allamanda, Donald Hall Road, Brighton BN2 5DF;
   (b) Sorrel, Chadborn Close, Brighton BN2 5DH;
   (c) Jasmine, Donald Hall Road, Brighton BN2 5DE;
   (d) Hazel, Turton Close, Brighton BN2 5DA, and;
   (e) Meadowsweet, Donald Hall Road, Brighton BN2 5DE.
   The blocks form part of a larger estate of local authority properties constructed on a steeply sloping site facing the sea on the eastern side of Brighton. The five blocks are of similar vintage and construction, but they are interspersed with other - rather different - properties on the estate. For reasons which will become apparent, the Tribunal need only

give details of Allamanda, although it inspected at least parts of each of the other four blocks, and carried out an internal inspection of two flats, including Flat 160 Allamanda (Ms Mala Nathan).

7. Allamanda has a roughly 'T' shaped footprint and comprises a 7-storey block with a flat roof containing some 47 flats. The southern elevation (which forms the cross of the 'T' facing southwards towards the sea) is in three vertical sections, with the two vertical areas rendered in a cream colour to contrast with a darker central section coloured brown. Each 'wing' has six concrete southward facing balconies on 1-6th floors with iron balustrades. The northern extension (which forms the stem of the 'T') has matching balconies on one side on Ground-5th floors. The main entrance and lift core are accessed from the street at Donald Hall Road to the north.

8. The Tribunal inspected the premises about 5 years after the works were substantially completed following particularly heavy rainfall.
    a. The Roof. The Tribunal did not inspect the roof of Allamanda. However, it inspected the roofs of two other blocks and it was able to observe the roof of Allamanda from one of these. In addition, it was agreed the condition of the roof of Allamanda was generally similar to the other roofs which were inspected. The flat roofs were covered in a layered felt waterproofing system with deep rainwater gullies. Adequate falls and detailing appeared to have been provided. Although the heavy rain over the weekend had left some ponding (especially in the gullies) there was no obvious significant problem with drainage. Parts of the solar finish were affected by lichen growth, but this had not led to any obvious deterioration of the finish itself. The doors to the tank room and other joinery required decoration, and the original Crittal windows at roof level also needed attention.
    b. Windows. The windows to the common parts and inside the flats were of modern uPVC style, most of which had a 'tilt and turn' mechanism and which were supplied with trickle vents in the top of the frames. The Tribunal inspected numerous window units in

the common parts in various blocks and it appeared that something in the order of a quarter could not be operated (either as a result of missing keys, poor adjustment or damage to the mechanisms). The Tribunal was also shown various defects to window units in two flats, including Flat 160 Allamanda, which was an upper story flat facing southwards. Two windows were missing their safety catches so that the windows could open to their full extent (an obvious falling hazard). Moreover, the glazing in one of the windows was broken. The original timber window cills internally had been cased with a plastic covering, and it appeared that draughts could enter through the gap between the two layers.

c. Balconies. The Tribunal observed small areas of rust bleeding through the paintwork on the balcony railings, particularly to those balconies facing the sea. This was consistent with the condition of the balconies in other blocks. Although the Tribunal was shown a balcony at Flat 116 Meadowsweet, which lacked a topcoat of paint, there were no obvious signs of similar defects at Allamanda. However, some of the masonry walls to the balconies showed mould staining and lichen growth.

d. EWI. The Tribunal inspected the details of the lower side of the EWI ("External Wall Insulation") system on the southern elevation of Hazel. The system comprised large 100mm thick rock mineral wool panels, which were attached to the original concrete elevations using adhesive and mechanical fixings. Two coats of render had been applied to the outer surface, so that the overall additional thickness of the EWI came to 130mm. There was some minor marking to the render, including lichen growth, staining and some impact damage/damage caused by removal of external fixings which had largely been repaired.

9. It is common ground that the blocks were constructed c.1957 by Wimpey using 'No-Fines' concrete. The well-documented difficulties with 'No-Fines' concrete led to early deterioration of the elevations and

eventually the Applicant was advised to seal and clad them with an EWI system. About two thirds of the cost of the major works related to the EWI project, although they also included Mechanical and Electrical works, replacement of windows and doors and some external decorating/landscaping.

The 'Justice for Tenants' respondents and Flat 178 Allamanda

10. The 'Justice for Tenants' respondents and the tenants of Flat 178 Allamanda, Donald Hall Road have now "agreed or admitted" the amount payable for their service charges. By virtue of LTA 1985 s.27A(4), the Tribunal has no jurisdiction to determine the application in relation the charges payable by those respondents.

11. An agreement has also been made that the relevant costs incurred by the Applicant in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the 'Justice for Tenants' respondents and by Mr Campbell. The Tribunal considers it is appropriate to make those orders under Rule 35 of the Tribunal Procedure (First-tier Tribunal) (England) Rules 2013 ("the Tribunal Procedure Rules").

The 'non-participating' respondents

12. This is the Applicant's application for a determination of liability to pay. Mr Allison stressed that the Applicant sought a determination of the liability to contribute to the cost of the major works against any respondent who had not reached an agreement about their liability to pay. In relation to the 'non-participating' lessees, Mr Allison accepted that the Tribunal had not made any order striking out their cases under Rule 9 of the Tribunal Procedure Rules. The Applicant therefore still had to prove its case against them and satisfy the Tribunal that they are liable to pay. Furthermore, the Tribunal is entitled to raise matters of its own volition in respect of liability, provided the Applicant is given a fair opportunity to deal with any such points: *Regent Management Ltd*

v Jones [2012] UKUT 369(LC) and *Admiralty Park Management Company Ltd v Ojo* [2016] UKUT 421 (LC). Given the significant sums involved, the Tribunal asked the Applicant to prove its case against the 'non-participating' respondents in rather more detail than would ordinarily be the case, and where necessary the Tribunal challenged the Applicant and asked it to deal with any obvious potential bars to liability to pay these service charges.

Contractual liability

13. Over the years, the Applicant has adopted various standard forms of lease for statutory Right to Buy sales under the Housing Act 1980. The leases of the 'non-participating' respondents are in two forms, described respectively as the 'Type 0 Lease' and the 'Type 1 Lease'. Counsel for the Applicant took the Tribunal through the provisions of both forms of lease in some detail.

14. As to the Type 0 Lease, Sch.4 para 10 provides that the lessee is obliged "To pay the interim charge and the service charge (defined in the Fifth Schedule hereto)". The "service charge" is calculated by apportioning the landlord's relevant costs[1] by a fraction based on rateable values: Sch.5 para 2(3). For example, the apportionment for Flat 1 Sorrel, Chadborn Close is 4.255% of the landlord's relevant costs. The relevant costs which may be included in the service charge are defined by Sch.5 para 2(2) to include "the total expenditure incurred by the Council ... in carrying out their obligations under Clause 3(2) and 3(4) of this Lease and the other costs and expenses reasonably and properly incurred in connection with the Building and referred to in the Sixth Schedule hereto". The relevant costs expressly include three kinds of expenditure on works:

    a. Clause 3(2) of the Lease contains an obligation on the part of the landlord to "keep in repair (a) the structure and the exterior of the demised premises (including the windows and window frames but excluding the glass therein) and the Building ...";

[11] The phrase "relevant costs" is derived from LTA 1985 s.18(2).

b. Sch.6 para 7 includes the costs of complying with LTA 1985 s.18-30 and;
c. Sch.6 para 15 contains a 'sweeping up' clause which refers to "all other expenses incurred by the Council in and about the repair renewal maintenance and redecoration of the Building..."

As to the contractual machinery for the service charge, Sch.5 para 5 provides that "as soon as practicable after the expiration of each Accounting Period there shall be served upon the Lessee by the Council or their Agents a certificate signed on behalf of the Council or by such Agents containing" various specified information.

15. The 'Type 1 Lease' is in similar form, but with the material difference that Sch.4 para 10 includes an additional obligation "(b) to pay any improvement contribution in respect of any improvements carried out to the Building or the demised premises calculated and payable in a similar manner to the service charge".

16. The application relates solely to service charges for works undertaken in 2013/15. The total cost of these works varied between each of the five blocks, and the Tribunal was taken to summaries of costs for each of the blocks. For example, the cost of the works to Sorrel, Chadborn Close amounted to £657,651.82. No interim charges were ever demanded on account of the cost of the major works, but the Applicant demanded "balancing" service charges in relation to them on 18 September 2015. For example, the sum demanded for "Overcladding and Refurbishment" at Flat 1 Sorrel was £27,938.09, based on an apportionment of 4.255% of the relevant costs of £657,651.82. Particulars of the costs for each flat appear in the Appendix to this decision. Mr Dave Arthur, the Applicant's Leasehold Services Manager, produced copies of the service charge certificates for the 2014/15 service charge year issued in 2015 and amended certificates issued in 2018.

17. Details of the works are set out below. However, in relation to contractual recovery, the Applicant:

a. Submitted that in the case of the Type 1 Lease, the additional words in Sch.4 para 10(b) were apt to permit the recovery of a contribution towards the relevant cost of improvements;
b. Accepted there was no equivalent express covenant in Sch.4 para 10(b) of the Type 0 Lease;
c. Contended that in any event all the major works were works of "repair", and therefore covered by Clause 3(2) of both forms of Lease. In this respect, Mr Allison referred the Tribunal to *Woodfall* at 13.032 and *Wandsworth LBC v Griffin* [2000] 2 EGLR 105;
d. Submitted that the contractual machinery in the leases had been complied with, particularly the certification requirement in Sch.5 para 5.

LTA 1985 s.19(1)

18. The 'non-participating' respondents have not raised any *prima facie* case that any of the costs of the major works were not reasonably incurred or that the works were not of a reasonable standard. Nevertheless, the Applicant relied on evidence from Mr Darrel Camfield, Mr Marcus Richardson and Mr David Vousten (Brighton & Hove City Council), Mr Allen Shaw (Mears Ltd), Mr Stuart Buckley BSc MRICS (pod LLP) and expert evidence of Mr Tim Brown BSc MRICS (GVA). Mr Allison also referred to *Waaler v Hounslow LBC* [2017] EWCA Civ 45; [2017] 1 WLR 2817. The submissions relating to LTA 1985 s.19(1) are dealt with below in respect of Flat 192 Allamanda.

Other statutory restrictions

19. The major works were subject to the statutory restrictions in s.20 LTA 1985 and the Service Charges (Consultation) (England) Regulations 2013 ("the Consultation Regulations"). The Applicant's case was that the works were carried out by Mears Ltd under a Qualifying Long-Term Agreement made in 2010 and that the works were therefore subject to the abbreviated scheme of consultation in Sch.3 of the Consultation Regulations. The Applicant relied on copies of Notices of Intention

dated 27 August 2013 and evidence given by Mr Arthur about the consultation with the lessees in respect of the works.

20. Finally, Mr Allison dealt with LTA 1985 ss.20B and 21B. Some of the cost of the major works had been incurred over 18 months before the demands for payment made in September 2015, but the Applicant relied on notices under s.20B(2) dated 10 November 2014 in respect of those costs. Copies of the demands for payment were accompanied by summaries of rights and obligations.

Discussion

21. The Tribunal is satisfied that:
    a. The Applicant has properly operated the service charge machinery, and in particular that the condition for certification in Sch.5 para 5 has been met (whether or not that provision amounts to a condition precedent).
    b. The major works are works of "repair" within the meaning of clause 3(2) of both types of lease. The condition of the roof coverings, windows, balconies and the 'No-Fines' concrete envelope of the blocks had deteriorated sufficiently to amount to being out of repair. The choice of remedial works was essentially a matter for the landlord. As to the cladding chosen to remedy the defects to envelope, the Tribunal finds this did coincidentally involve an element of improvement, but that is not in itself something which takes the works beyond a repair: *LB Wandsworth v Griffin* (supra). It is therefore unnecessary to consider whether the costs are recoverable as an "improvement contribution" under Sch.4 para 10(b) to the Type 1 Lease.
    c. The Applicant has complied with LTA 1985 s.20 and Sch.3 of the Consultation Regulations.
    d. The Applicant has complied with LTA 1985 ss.20B and 21B.

22. The Tribunal deals below with the question whether some of the major works were not of a reasonable standard under LTA 1985 s.19(1)(b).

However, for present purposes, and having inspected the completed works, it finds that the relevant costs of the works were reasonably incurred under LTA 1985 s.19(1)(a).

23. Subject to the issue of s.19(1)(b), the Tribunal finds the 'non-participating' respondents are liable to pay the service charges claimed in the application. None of the 'non-participating' respondents have applied for an order under LTA 1985 s.20C, so no order is made under that provision. Details appear in Appx.1 to this decision.

Flat 192 Allamanda

24. The Applicant seeks a determination that Mr Dawe and Ms Timperley are liable to pay the sum of £27,654.75 for the major works. The Certificate of Expenditure dated 26 July 2018 reaches this figure by applying an apportionment of 4.301% to relevant costs of £642,984.27 for "Overcladding and Refurbishment" of Allamanda. Annexure Z of the Applicant's Statement of Case includes a breakdown of the figure of £642,984.27 by Mears (the Applicant's contractors), an extract from which appears at Appx.2 to this decision.

25. At the hearing, Mr Dawe relied on the Statement of Case dated 28 May 2018 and the Applicant relied on its Statements of Case dated 27 March and 3 July 2018. Mr Allison also produced a skeleton argument for the assistance of the Tribunal.

26. Mr Dawe did not seek to raise any argument that the charges were not recoverable under the terms of the lease of Flat 192 Allamanda (which is a "Type 1" Lease). Neither did he argue that the relevant costs were limited by LTA 1985 ss.20, 20B or 21B. The focus of the argument in the Statement of Case was on two points, namely (i) the works to the balconies and (ii) the work to the windows. It was said that the work carried out in 2014 was not of a reasonable standard under LTA 1985 s.19(1)(b). It also raised issues in respect of the communal entrance door, which it was said had never worked properly. Although these are

obvious very genuine concerns, the major works in this application did not include any costs relating to the communal door system - so the communal doors are not directly relevant to the issues which the Tribunal has to determine.

27. The parties were asked about the precise figures involved in the arguments about the balconies and windows. It was agreed that in respect of Allamanda:

    a. The balcony works were the main component of the concrete repairs set out in the Mears Schedule for Allamanda (£2,150), although some elements were included in other parts of the Schedule, namely Access (£78,081), Fees (£16,242.93), Overhead Recovery on Sub-Contractor Costs (£24,538.60) and Mears Overheads and Profit (£29,440.67): see Appx.2. The parties were happy to work on the basis that the total cost of the Allamanda balcony works was in the order of £5,000.

    b. The window works were the main component of the "Windows & Doors" work in the Mears Schedule for Allamanda (£62,551.42), although some of the cost of the window works was included in other headings such as Fees, Overhead Recovery on Sub-Contractor Costs and Mears Overheads and Profit: see Appx.2. Once again, the parties were happy to work on the basis that the total cost of the Allamanda window works was in the order of £65,000.

    Taken together, these two issues therefore affect relevant costs of about £70,000. Any limitation under s.19(1)(b) would result in a corresponding reduction in the service charges payable by the lessees of Flat 192 Allamanda. By applying the appropriate apportionment of 4.301% to the figure of £70,000, the two arguments affect the lessees' liability to pay approximately £3,000 of service charges.

Balconies

28. The balcony works principally involved painting the iron railings or balustrades. According to Mr Shaw, the Applicant's contractors prepared the metal and then applied 2 coats of undercoat and a topcoat of paint. The materials used were specified for coastal conditions and came with a 10-year warranty. Nevertheless, within a very short period it was discovered that the paint was blistering with rust. Several balustrades were therefore stripped back again to the metal and the treatment re-applied. These were then inspected 6 months later, when it was found that rust had already come through. The paint manufacturers refused to honour the warranty, but a new solution was found. It had been noted that the primer applied to the masonry of the balcony floors provided good protection to the feet of the balustrades where they entered the concrete. The same masonry primer was therefore applied to the rest of metalwork, and they were repainted. This proved an effective solution, and most of the flats were treated in 2018, although some 14 flats remain where access has proved difficult. No additional costs were involved in the remedial treatment.

29. Mr Brown inspected some balconies. He found the membranes installed at the base of the balconies to be good and functioning and identified limited surface corrosion to the railings. This was "reflective of the performance expectations of a painted ferrous metal component in a coastal environment applied up to five years ago".

30. Mr Dawe relied on his Statement of Case. He referred to a letter from the Applicant dated 24 November 2015 which suggested the balcony works would take place in four stages – preparation/priming, undercoat/stain block, gloss coat and repainting. Mr Dawe suggested the first and second stages were carried out in a shoddy manner, but that no-one returned to carry out the third and fourth stages. By January 2017, the metalwork had not been completed and the masonry paint was falling and covered in green mildew /mould. He complained

to the Applicant and various promises were made to undertake remedial work.

Window Works

31. The windows which formed part of the 2014 major works were supplied and installed by specialist sub-contractors Graham Holmes Astraseal Ltd. The Applicant produced copies of FENSA (Fenestration Self-Assessment Scheme) certificates dated 12 December 2013 certifying the windows as compliant with ss.4 and 7 of the Building Regulations 2000 and a copy of a Certificate of Guarantee for the windows at Allamanda dated 22 December 2013. The Applicant relied on the evidence of several witnesses in relation to the windows.

32. Mr Marcus Richardson stated that in 2014 he was employed as the Applicant's Clerk of Works for the project and that he had regularly attended meetings on site and dealt with snagging issues. Since the works were completed, several issues had been raised by residents in relation to windows and he had attended several flats and liaised with leaseholders about issues which arose. Often the remedial work involved adjustment of the mechanism to ensure the safety catches worked. He attended Flat 192 Allamanda with an engineer from Astraseal to discuss the windows on 28 March 2014 and "all issues regarding the windows were rectified at the meeting". He had not received any further correspondence about the windows at Flat 192 Allamanda since that date. Where other leaseholders had raised concerns about the windows, Mr Richardson would generally call out the customer services team at Astraseal under the window warranties. As far as the window cill extensions are concerned, new under cills were necessary externally because of the thickness of the 130mm EWI insulation, to ensure water run off over the insulation rather than into it. The Tribunal assisted Mr Dawe with putting his case to Mr Richardson. Mr Richardson did not accept a suggestion that some of the window units had been fitted upside down. He was also not aware of allegations that some units had scratched glass and defective vents,

although there would always be some minor scratches to new glass. Some vents were replaced by Astraseal, but he was not aware of any complete units being replaced. Mr Richardson accepted that there were complaints about draughts, and as a result some units had to be adjusted to make them tighter (which made them harder to open). When asked by the Tribunal, Mr Richardson accepted that some of the window units had not been operable on the morning of the inspection, but he considered that they simply required new keys, adjustment and maintenance.

33. Mr Allen Shaw is a Divisional Project Manager for Mears. He gave evidence that by the time of the major works, the existing uPVC units were at least 20 years old. The coastal location exacerbated the problems for windows, since "the high salt content [of the air]... causes corrosion to internal components faster than in other areas (in some instances corroding up to three times faster)". During the works, Mears replaced windows to some 120 flats (about 360 in total). He accepted there had been "a relatively small number of complaints". Mr Shaw had attended several flats and liaised with the leaseholders, and the main complaints had been about draughts. However, even uPVC units would not be totally draught-free, particularly when installed in "high rise coastal blocks". The windows featured Maco gearing and Securi Style hinges which could be raised and adjusted. When cross-examined by Mr Dawe (with the help of the Tribunal) Mr Shaw stated that the new windows were like for like replacements, and although not airtight, they were "suitable". The windows featured tickle vents which could be draughty, but they were necessary for ventilation. In response to questions from the Tribunal, Mr Shaw stated that better windows were available – at a higher cost. But he still considered the windows "worked".

34. Mr Brown noted limited spoiling of external cills and some minor misalignment (sagging), but concluded the replacement windows were of a reasonable quality. The windows and doors he had seen on

inspection were fully functioning. But in any event, it was not "untypical" to need to adjust 'tilt and turn' windows. Some degree of alteration and adjustment would always be needed when modern windows were installed in a 60-year old building - constructed when building tolerances were far greater.

35. The Statement of Case from the lessees stressed that the windows had been a problem from the very beginning. It took until 2016 for them to be sorted out. The Applicant had replaced many complete window units and many parts (such as glazing units). In the case of Flat 192 Allamanda, the vents had been replaced. Mr Dawe referred to letters of complaint to the Applicant, detailing the problems. A major problem was the retro fitting of extensions to the window cills – which were an unsightly bodge that would cause problems in future. The original specification had suggested replacing the original cills with uPVC ones, but this had not been followed.

Discussion

36. As to the ferrous elements of the balconies, the Tribunal was struck on inspection by the extremely exposed location of the site. Allamanda is a high-rise block on a hill overlooking the sea, with no protection at all from the sea winds. A more challenging environment for maintenance of architectural ironwork can scarcely be imagined. Given this challenging environment, the condition of the balconies on inspection was in many ways quite good – bearing in mind that the inspection took place some five years after the works were substantially completed. The Tribunal is satisfied that the overall standard of painting work in 2014 was reasonable. The Tribunal does of course recognise there were difficulties with the original undercoat which led to blistering and rust – something the Applicant candidly admits. However, these problems affected decorative work costing £5,000 in the context of a major works project costing some £640,000. Minor problems are inevitable in such a large project, and not every defect will engage s.19(1)(b) – the standard is one of reasonableness and not

perfection. Moreover, the Tribunal is entitled to take into account that the Applicant used a proprietary brand of primer with a warranty and that it carried out remedial works at no additional cost to the respondents. It would be inappropriate to limit the Applicant's relevant costs when the lessees have got the painting they were charged for – albeit perhaps rather later than was anticipated. Some complaints were made about mould growth and staining to the masonry of the balconies, and the Tribunal did see some limited evidence of this on inspection. But the Tribunal considers that these were essentially cosmetic items of routine cleaning and maintenance, rather than indicating any problem with the works in the first place. The issue here is whether the works carried out in 2013/15 were of a reasonable standard, not whether proper maintenance was carried out in 2018.

37. The windows are also exposed to the coastal winds, but there was no evidence on inspection that this had caused any particular problem with the Astraseal uPVC units installed some 5 years ago. The glazing and frames inspected in the various blocks were essentially in reasonable condition. There are clearly difficulties with adjustment and operation of the 'tilt and turn' mechanisms and problems were observed both with the mechanisms of the window units in the flats and with the similar mechanisms to the window units in the common parts (which were installed separately to the 2013/15 major works project). However, the mechanical problems observed essentially related to lack of maintenance – not poor installation. The safety stays and adjustment for 'tilt and turn' windows require periodic attention, and any failure to maintain the units would increase the risk that residents might damage the mechanism in an attempt to force the units open or closed. This is confirmed by the evidence of Mr Richardson and Mr Brown. Moreover, the evidence given by the Applicant's witnesses is that problems arising from poor installation of the windows are quite rare. The most serious window defects were seen at 160 Allamanda, but even this was essentially caused by failure to adjust the mechanisms or third-party interference with the safety stays, and not defects with

installation. As far as the vents are concerned, the Tribunal did not see any defective vents, and it seems that any problems with the vents was temporary. The decision to encase the existing internal cills with a uPVC covering (as opposed to replacing them) does not seem inappropriate as a cost-effective solution. The Tribunal was shown some minor examples of draughts coming through gaps in the cills, but (as the Applicant points out), no window units in domestic properties would be expected to be 100% airtight. The relatively minor draughts seen in this high-rise property exposed to the sea winds did not indicate any defective installation work.

38. Apart from the obligation to install windows of a reasonable standard, the leases also put the Applicant under various continuing obligations to repair and maintain parts of the Building. Whether such continuing obligations required the Applicant to maintain and adjust the new windows after the original works were completed is not a matter for this Tribunal. But for present purposes, the Tribunal is satisfied that the original window installation work carried out by Astraseal was of a reasonable standard.

39. It follows that no limitation should be made to the relevant costs of the balcony or window works under LTA 1985 s.19(1)(b). Mr Dawe and Ms Timperley are therefore liable to contribute towards the full amount claimed. The Tribunal determines they are liable to pay service charges for major works in the sum of £27,654.75.

Disposal

40. The Tribunal's determination in respect of each respondent is set out in Appx.2.

Judge MA Loveday (Chairman)
18 October 2018

Addendum

41. The Tribunal noted during its deliberations that there were inconsistencies between the various schedules of Respondent provided – which in some instances referred to different tenants for the same flat, and in other instances contained different spellings for what appeared to the same Respondent. The Tribunal therefore requested an accurate list of Respondents from the parties. It received comments from the Applicant's solicitors about the names of four potential Respondents and the 'Action for Leaseholders' group (through counsel) provided a further list of the tenants who were part of that group. It is regrettable that in some instances these two further lists again conflicted. The Tribunal has therefore done its best with the information provided to list the correct Respondents in Appendix 1. In the event the Tribunal has incorrectly identified or spelt the names of any party, attention is drawn to the further powers available under Rules 10 and 50 of the Tribunal Procedure Rules.

Judge MA Loveday (Chairman)
24 October 2018

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.

Appendix 2: Mears External Refurbishment: Donald Hall Road, Allamanda	
Description	**Cost**
Preliminaries	£47,636.39
Access	£78,091.00
Roofing	£75,227.44
Concrete Repairs	£99,480.45
Insulated Render	£145,382.00
Mechanical and Electrical	£13,816.00
Windows & Doors	£62,551.44
External decorating and landscaping	£2,150.00
Contingencies	£14,073.75
Fees	£16,242.93
Overhead Recovery on Sub-Contractor Costs	£24,538.60
PH Jones - Flue extensions Etc.	£9,623.43
Works Sub Total	£588,813.43
(5%) 5% Mears Overheads and Profit @5	£29,440.67
Works total	£618,254.10
(4%) BHCC administration & management	£24,730.16
Total	£642,984.27