First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/29UG/LSC/2019/0065**
Property	**:**	**8 Burch Road,** **Gravesend,** **Kent DA11 9NG**
Applicants	**:**	**Peter Wilkins (flat A)** **Kieron Murty (flat B)** **Vikas Dhuma (flat C)** **Olu Babatunde and Emmanuel Sodola (flat D)** **Verity Graham (flat E)**
Respondent	**:**	**Floorweald Ltd.**
Date of Application	**:**	**25th June 2019**
Type of Application	**:**	**to determine reasonableness and payability of service charges and administration charges**
The Tribunal	**:**	**Judge Bruce Edgington** **Richard Athow FRICS MIRPM**

DECISION

---

1. In respect of the Respondent's claims for service charges and administration charges, the Tribunal determines that the following amounts are reasonable and payable for 2018 and 2019:

   (a) Flat A – nil – the account is in credit in the sum of £265.44
   (b) Flat B - £610.54
   (c) Flat C – nil – the account is in credit in the sum of £2,691.69
   (d) Flat D - £267.44
   (e) Flat E – nil – the account is in credit in the sum of £391.61

2. Orders are made pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") and paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from recovering any litigation costs incurred in these proceedings as part of any service charge or administration fee.

Reasons

Preamble

3. The Applicants have lodged 2 numbered bundles plus a supplementary bundle, and the Respondent has lodged 1 separate bundle for the hearing each of which has page numbers running from number 1. The Tribunal will refer to the Applicants' two main bundles as being A1, 2, etc. and AA1, 2, etc. for the supplementary bundle. The Respondent's bundle is R1, 2, etc. On the 6th March 2020 and the 13th March 2020, the Applicants and the Respondent respectively filed further supplementary bundles. These have also been fully considered by the Tribunal but as neither are actually quoted, they do not need to have page numbers allocated.

Introduction

4. This is an application by the long leaseholders of the 5 flats at the property for a determination as to whether service charges and administration charges are payable and/or reasonable. A First-tier Tribunal, with one member the same as in this Tribunal, has already resolved the reasonableness of service charges and administration charges for the period up to the end of 2017. The parties will have seen the decision ("the 2019 decision") made by that Tribunal because 2 copies are in the bundles.

5. Such 2019 decision should be read in full because it sets out the law, the relevant terms of the long lease of flat D, a description of the property following an inspection and the Tribunal's determinations on many matters relevant to these proceedings. It will come as no surprise to the parties that such determinations will be followed in this case for 2018 and 2019 unless the evidence is substantially different.

6. As these proceedings are complex, the Tribunal considers that it would be helpful to set out a chronology of relevant events:

Date	Event	Page no.
21.12.12	photos of roof	A334-344
09.04.13	further photos of roof	A345-352
2014	ABC BM Ltd. take over management	R206
04.12.14	report by A M Associates obtained by Respondent with Schedule of Works showing work to the roof with PC sum of £2,000. States that flat D has damp & water ingress.	A253
21.01.15	1st section 20 notice served for renovations	A283
08.04.15	2nd (amended) section 20 notice served with Prorend (UK) Ltd. quote of £42,900 chosen	A293
01.11.16	further 2nd section 20 notice served with Prorend's quote of £40,620 chosen	A299
08.09.17	Respondent issues court proceedings (flat B)	A409
22.10.17	Respondent issues court proceedings (flat A)	A399
08.01.18 (?)	Respondent issues court proceedings (flat E)	A441
15.03.18 (?)	Respondent issues court proceedings (flat C)	A419
20.06.18	Invoice from Marios Louposki Builders for Repair work to roof only for £9,500	A319
29.06.18	photos of grounds	A354-355

18.08.18(?)	drone pictures of roof	A356-369
18.08.18	Respondent's photos of roof void	R210-212
03.09.18	court cases for flats A, B & E consolidated and transferred to the Tribunal	A450
12.12.18	Respondent issues court proceedings (flat D)	A431
12.12.18	Respondent's photos of roof void	R217-218
21.02.19	court case for flat D transferred to Tribunal	
01.05.19	Tribunal determines service charges up To end of 2017	A691
27.06.19	This Tribunal application is received	A48
15.08.19	claim relating to flat D determined (not costs)	A17
15.08.19	Tribunal directions order	A14
25.09.19	claim relating to flat B determined (not costs)	A39
25.09.19	claim relating to flat A determined (not costs)	A43
06.11.19	claim for costs relating to flat A finalised	AA4
06.11.19	claim for costs relating to flat B finalised	AA8
06.11.19	claim relating to flat E struck out	AA10
12.11.19	transfer of freehold to nominee purchaser	AA34
13.03.20	claim relating to flat D struck out	

7. To say that this application is contentious is an understatement. There are all sorts of statements, e-mails and letters in the extensive papers (1,114 pages filed) in which both parties accuse the other, or, specifically, their representatives or agents, of being dishonest and/or fraudulent. It is unfortunate that the parties do not seem to have taken legal advice at relevant times. For example, the Respondent demanded money on account of substantial costs of repair and renovation before such works had been started when, as has been determined, such demands cannot be sent according to the terms of the leases. It was these demands that made the dispute between the parties much worse than it had been.

8. The unsigned and undated statement of case now filed by the Respondent as part of its bundle, commencing as page R1, states that the Respondent 'is the victim' as it bought the freehold in 2014 with only £750 per annum in income from ground rents; that lessees should always pay service charges 'absent manifest error'; that all sums claimed are payable because the lease says so and "*we will appeal the Tribunal's decision in the case of Flat D*", i.e. the 2019 decision.

9. The fact of the matter, of course, is that the Respondent should have taken proper legal advice when it purchased the freehold to ensure that it was aware of the lease terms, particularly as the payment of service charges in advance and the creation of a sinking fund, neither of which is permitted by the leases.

10. On the assumption that the parties have now taken legal advice, they will know that a Tribunal does not take evidence on oath in service charge cases and is therefore not in a position to resolve extremely contentious issues involving possible fraud and other criminal offences. Having said that, this Tribunal does consider that it has sufficient other evidence to determine, under the civil standard of proof, all the outstanding service charge issues and some of the administration charges issues.

The Lease

11. There are 2 copies of the lease of flat D in the bundles and the parties will note the comments in the 2019 decision which this Tribunal endorses. It is assumed that the other 4 leases are in basically the same terms.

The Law

12. Five sets of county court proceedings had been issued in 2017 and 2018 i.e. one for each flat. All save for that relating to flat C were transferred to this Tribunal for determination. The Applicant long leaseholders then issued a separate application in this Tribunal covering basically the same issues but for different dates.

13. A Tribunal judge acting as a county court judge has therefore had to take each county court application and make separate orders which have eventually finished up with them all being dismissed or struck out. Thus, the Tribunal judge sitting in this case has no jurisdiction to deal with any of the county court cases. This is unfortunate in view of the fact that costs/administration charges are claimed by the Respondent covering what appear to be both the county court and the Tribunal proceedings.

14. The Appellate courts and tribunals have been clarifying the two distinct jurisdictions of the county court and the First-tier Tribunal when dealing with costs. When these proceedings were commenced, the relevant and most up-to-date case was **Avon Ground Rents Ltd. v Child** [2018] UKUT 204 (LC). In that case, the service charges outstanding were about £300 which sum had been paid by the time of the hearing.

15. Contractual costs were claimed as administration charges as defined by paragraph 1, Schedule 11 of the 2002 Act. The earlier case of **Freeholders of 69 Marina, St. Leonards-on-Sea v Oram & Ghoorun** [2011] EWCA Civ 1258 had determined that contractual costs could include proceedings both before the court and the Tribunal. In order to save the expense of a further hearing, the tribunal determined the reasonableness of the costs incurred in both the court proceedings and the tribunal proceedings. The judge then sat as a county court judge and gave judgment for that amount.

16. On appeal, it was determined that this was procedurally incorrect as administration charges to be assessed by a Tribunal are not actually payable until a formal notice with the relevant statutory information has been served i.e. the Tribunal had no power to assess their reasonableness. This is of particular importance because no such notice has been served in this case. The appellate body did not openly state that costs of both the court and the tribunal could not be assessed together by the tribunal.

17. A dispute over the assessment of the costs incurred in the case of **John Romans Park Homes Ltd. v Hancock** was then determined by Judge Rodger QC, Deputy Chamber President, Upper Tribunal (Lands Chamber) in his capacity as a judge of the county court. The Order he made relating to the assessment of such costs following the main appeal hearing in the Upper Tribunal was dated 2nd December 2019. The judgment of Judge Rodger QC was made in his capacity as a Circuit Judge on appeal from a tribunal judge sitting as a county court District Judge. Unfortunately, it

does not yet appear to have been formally reported. The only case reference available at the moment is the Weymouth county court reference of C00WY133.

18. This is an important case because it concluded that the decision in **Avon Ground Rents** was not totally correct. It determined, in effect, that costs incurred in and incidental to the county court proceedings should be assessed by a judge sitting as a county court judge. Costs incurred in tribunal proceedings should be assessed by a First-tier Tribunal. Judge Rodger QC said, at paragraph 62 of his judgment,:

> "*As I have explained, courts of coordinate jurisdiction are expected to follow one another's decisions in the absence of powerful reasons not to do so. Nevertheless, having come to the clear conclusion that costs incurred during the tribunal stage of proceedings transferred from the county court to the FTT are not costs of proceedings in the county court, I am bound to give effect to that conclusion and not to follow* ***Avon Grounds Rents***"

19. It is considered that even though his decision may not be binding, it is certainly very persuasive as Judge Rodger QC is the Deputy Chamber President of the Upper Tribunal (Lands Chamber). The effect of these decisions in this case is that this Tribunal cannot determine contractual costs because none of the county court cases transferred is still open and no formal demand has been served for costs incurred as a result of the Tribunal proceedings.

20. As to other points of law, Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

21. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

22. Section 20B of the 1985 Act prevents landlords from recovering service charges from tenants where the charge was incurred more than 18 months before the demand unless notification of the charge and the fact that it would be demanded was given to the tenant.

23. Paragraph 1 of Schedule 11 of the 2002 Act ("the Schedule") defines an administration charge as being:-

> *"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable… directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord."*

24. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

25. Section 20C of the 1985 Act and Paragraph 5A of the Schedule give the Tribunal or a county court the power reduce or extinguish a tenant's liability to pay for the costs of representation of a landlord, despite what is in the lease.

26. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof in this sort of service charge case. At paragraph 15 he stated :

"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the (Tribunal) *to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."*

The Inspection

27. Judge Edgington did not inspect the property because Mr. Athow had inspected it for the 2019 decision and such decision sets out a clear description thereof. The parties were given notice of this prior to the hearing and raised no objection.

The Determination

28. A hearing date was fixed in this case for the 18th March 2020. On the 12th March an e-mail was received from Mr. Bermant, the Respondent's lay representative, who asked for the hearing to be by video conference or for the hearing to be adjourned. He explained that he was in Israel and would be travelling to England for the hearing. However, he had been told that when he travelled back, he would have to self isolate for 14 days because of the coronavirus pandemic. He says that his life is 'pretty heavily scheduled' but does not refer to any particular commitment within that 14 day period. He also says that 'most flights are being cancelled at the moment because nobody is flying'.

29. Mr. Bermant then suggested an adjournment until 23rd April because he was in England again for a Court of Appeal hearing the following day for "*the appeal to overturn the county court decision on the basis that Ms. Elu committed fraud*".

30. The Tribunal was very concerned about Mr. Bermant's application because (a) no video conference facilities could be made available and (b) the view of the government and the senior medical advisors in England at the time was that the pandemic would be getting much worse and the chances of

everyone being available for a hearing in late April were reducing by the day.

31. In order to try to resolve the problem, the Tribunal reminded the Applicants that they had agreed to a paper determination when making their application and as the documents filed were very comprehensive (and Mr. Athow had inspected the property), it was suggested that this matter could be disposed of as a paper determination. Neither party was particularly enthusiastic about this but neither party actually objected. The decision was therefore made to determine the case on the papers.

Discussion

32. The claims disputed by the Applicants are set out in their Scott Schedule and are as follows:

(a) The insurance premiums for 2018 (£967.99) and 2019 (£270.23) i.e. until the freehold was transferred to the nominee purchaser. It is alleged that the property is incorrectly described and there is no terrorism cover. The point is also made that the insurance was cancelled when the Respondent was dissolved on the 18th June 2019. The Tribunal considers that (i) the description was sufficient (ii) the lack of terrorism cover does not mean that the building was not covered for the other risks and (iii) there is evidence at pages R26-29 that cover was there from 10th July in each year until 9th July 2020. The policy was cancelled from 12th November 2019 i.e. when the freehold was transferred. Having said that, the actual premiums were £734.52 for 2018 and £270.23 for 2019 and these sums are allowed.

(b) Debt collection + FTT in the sum of £305. This sum is not quantified and the Tribunal considers that as a similar claim for an administration charge was made in the county court proceedings and allowed for those in arrears, no further charge would be allowed.

(c) Electricity charges of £192.58 for 2018 and £100.97 for 2019. It is said that these are duplicates of charges paid in previous years. The 2019 decision determined reasonable charges until the end of 2017. The evidence shows that the claim is for the charges actually incurred in the years in question as set out from pages R32-53. The maths has not been challenged and these charges are therefore allowed.

(d) Fire alarm maintenance agreed at £192.

(e) Reactive contracting report agreed at £108.

(f) Travel to Dartford county court at £16.40 is claimed as a contractual expense. This does not come within the Tribunal's jurisdiction.

(g) Insurance excess claim of £350. This is disputed because of an alleged breach of the terms of the lease i.e. a breach of contract counter-claim. As the £350 was deducted from the insurance payment, it is allowed. The counterclaim is not understood by either the Respondent or the Tribunal and is not particularised in any meaningful way so as to make it a reasonable deduction.

(h) Management fees of £1,593.84 (2018) and £617.36 (2019) are claimed. The 2019 decision determines that a reasonable management fee for the years 2016 and 2017 was £540 including VAT for each year for the reasons set out which are adopted by this Tribunal. For 2018 and half of 2019 i.e. the time when the managing agent was involved, the Tribunal will allow £900 including VAT.

(i) Out of hours helpline. £146.88 and £57.54 are claimed for this. The allegation is that the telephone line has been out of order since 2016. The Respondent says that if the telephone number has changed it is always set out on the managing agent's communications e.g. page R339. It is also said that such number has been used recently on the 17th February 2020 at 21.30 and someone answered immediately and identified themselves as the ABC out of hours number. The claimed amounts are allowed.

(j) FTT fees of £660. Although no paperwork has been produced to substantiate them, these fees appear to relate to applications to the Tribunal for dispensation from the consultation requirements in respect of the proposed major works. The 2019 decision makes it clear that such applications were not necessary and such fees are therefore not payable by the Applicants.

(k) Admin. fee of £600 including VAT for 'handover'. This appears to relate to the handover of management from the Respondent to the nominee purchaser in December 2019. However, at that time the managing agent appears to have stepped down and there is no indication of what time was spent, if any, or what was actually handed over. In these circumstances, no fee is allowed.

(l) £9,500 is claimed for an emergency roof repair and a further £1,140 is claimed for what the Respondent describes as 'supervision fees'. These 2 items are the subject of a separate section of this decision.

(m) A claim is made for the cost of a survey undertaken in 2014 (page A253) by AM Associates. The Applicants says that no invoice or formal demand has been sent for this and this assertion does not appear to be denied. Section 20B of the 1985 Act says that if service charges "*were incurred more than 18 months before a demand for payment of the service charge is served on the tenant*" then they are not payable unless the tenant was told within the 18 month period what the charge would be and that it would be claimed. There is no evidence to suggest that such an indication was given and the charge is therefore not allowed.

33. It is also right to mention that Ms. Elu has also raised the issue of the reserve fund of £10,478 set out in the 2017 accounts at page AA35. This fund now consists of a few pence. Mr. Bermant suggests that the monies in that reserve account have been repaid to those who paid the monies in. As the Tribunal has no specific evidence as the exact position, it cannot comment further. Once again this does not come within the Tribunal's jurisdiction.

34. Although the Respondent has purported to reply to the Scott Schedule it is not in the correct form. A reply to a Scott Schedule should set out each claim, the Applicants' comments and then the Respondent's comments so that the court/Tribunal will have all the relevant information in one document. Nevertheless, the Respondent's form does give its responses and also makes further claims as follows. Most of the claims relate to monies which can only be recovered in the county court. However, the Tribunal will gives views which may assist the court:

(a) Claims of £4,000 and £8,000 are made by the Respondent for its time in dealing with the Applicants. This is not quantified save for an

'estimate' of 40 and 80 hours being spent in 2018 and 2019 respectively. No details as to how the hourly rate is calculated are set out. The whole amount is denied. This is clearly intended to be a claim for contractual costs covering both the county court proceedings and Tribunal matters. There is nothing in the leases which allows such an unquantified hourly rate to be claimed. The lease, at clause 15.1, states that a tenant must pay "*the Landlord's reasonable costs, fees, charges, disbursements and expenses*". Mr. Bermant appears to be simply a director and possibly a shareholder of the Respondent. Any limited company landlord who buys a 'ground rent' property, cannot expect to recover what amounts to a simple lack of profit rather than an actual expense.

(b) A further £2,000 of "*Landlord's costs (very conservative estimate)*" of taking legal advice from a number of sources is claimed. Similar comment to the previous item.

(c) Ground rent is claimed at £279.17. This is not a service charge i.e. is not a matter for this Tribunal. However, the claims seem to be accepted and are included in the calculations below.

(d) Travel costs to the Tribunal hearing in the sum of £500 are claimed. This is presumably a contractual cost i.e. an administration charge. As there is no hearing, the charge is not allowed.

(e) There are then past subletting fees and an assignment fee claimed which are no part of these proceedings. The Respondent will have to make separate claims in the county court for these.

(f) There are then unquantified claims against unparticularised tenants for registration fees for mortgages etc. entered into since 2014. Once again, these are matters which will have to be the subject of a separate claim in the county court where the Respondent will have to prove that such mortgages etc. have been entered into.

(g) Finally, there is an unquantified claim for interest which is a contractual claim but as it is not quantified, the Tribunal will not allow it.

35. Turning now to the **emergency roof repair** and the supervision cost, this issue causes the Tribunal much concern. It is clear that an invoice has been raised by Marios Louposki Builders at page A319 for £9,500. It is dated 20th June 2018. The introduction to this invoice is interesting because it simply says that they were instructed to attend the site because "*we were told that the main pitched tiled roof was leaking into Flat D*".

36. In fact, the Respondent, through its managing agent, was aware of this in 2014. It commissioned a surveyors report from A M Associates which commences at page A253 in the bundles. It sets out a summary of the problems which includes "*Flat D – this occupies the top floor and areas of damp and water ingress could be found above the head of the windows and along the external walls, in particular, to the flank and front elevation*". Considerable works to the roof are recommended and included in the specification of works used in the Section 20 procedure.

37. The works said to have been done by Marios Louposki included "*we took down approx. 100 sacks of vegetation and rubbish and disposed of it in a regulated waste site; we replaced approx. 60 slates with new slates; we rehung and refixed approx. 190 slipped roof slates, attached 60 x ridge*

tile straps onto ridge tiles to secure ridge tiles; we repaired and realigned 70 linear letters of lead flashings around the edges of the roof; supplied and fitted 45 new ridge tiles".

38. Of note is the fact that there is no item for or mention of the hire of scaffolding, a tower or 'cherry picker' to enable all the bags to be taken down at least 3 storeys or for the tiles and other materials to be taken up to the roof. There is no evidence to suggest that the contractor obtained access through the interior of the building.

39. The Section 20 procedure had been completed by then and the appointed contractor was Prorend (UK) Ltd. There is no explanation as to why this company was not used for the works. If there was no reason why that company could not be used, then there is a breach of the Section 20 procedure as the work to the roof was clearly included in the anticipated works.

40. A statement from Simon Clifford who describes himself as the managing director of Sinclairs Builders is at pages R204 and 205. He says that his company has a long standing relationship with the managing agents and Mario Louposki was outsourced as a subcontractor for this work. If that was the case, then Mario Louposki's invoice should have been address to Sinclair Builders. He then says "*there is no question that he performed the work – many photos and email attest to this fact and many sacks of vegetation were taken off the roof*". Unfortunately, there seems to be no evidence of this from the Respondent apart from letters, e-mails and statements from people who have not actually inspected the work. Mr. Clifford also complains that he made a number of attempts to get into Flat D to carry out a survey and effect repairs. An owner of that flat, Mr. Babatunde, in his statement at page A126, says that the leak was coming in from the roof void above the flat which can only be accessed via the hatch on the top floor communal landing which is not in flat D. Clearly the Respondent would have had access to the communal landing.

41. One copy e-mail supplied by the Respondent at page R244 is from the leaseholder of flat E (Verity Graham) who says that on the 5th September 2018, Tony Fischer from the Respondent company attended the site with someone from Allen Roofing Ltd. Ms. Graham reports that such person "*said (after I explained about the £9500 works supposedly carried out) that no slates had been replaced and that Tony had said that he was annoyed with ABC for not arranging the repairs as he had instructed*".

42. That evidence is supported by a report in the Applicant's evidence from Allen Palmer of Allen's Roofing & Building Ltd. at pages A374 and 375. He confirms that no slate has been replaced and there are a number of other defects to recent work undertaken. There is also a report/quotation from Roofteam at page AA40 which sets out unrepaired defects to the roof. In its final submissions, the Respondent says that Allen Roofing Ltd. only made those comments because they wanted the work. However, that does not change the fact that it was the Respondent's representative who brought them to the property after the work was allegedly completed.

43. There is also the evidence which is a series of photographs commencing at page A356. They are said to be from a drone flight and the first page has the date 18th August 2018 i.e. after the roof work was said to have been undertaken. These photographs are not disputed by the Respondent and they appear to confirm the view expressed by Allen Roofing Ltd. i.e. that no tiles have been replaced.

44. Finally, there is the evidence of Vikas Dhuna (page A123), Olu Babatunde (page A125), Peter Wilkins (A128), Emmanuel Sodola (A132), and Verity Graham (A134) in statements, each containing a statement of truth, which all confirm that little, if any work was undertaken to the roof in 2018. Ms. Graham's evidence, in particular, is useful because she is the only Applicant who lives in the building. On the 19th July 2018 she took her children to nursery and returned to her flat just after midday. She then saw "*quite a few weeds/plants scattered around the building. I could see some caught on a TV aerial on the wall of the building. There was no sign of anyone working…*".

45. Ms. Graham says that she did not see any evidence of other work undertaken at that time before receiving a copy of the invoice from Marios Louposki. Thus, her evidence indicates that if any substantive work was undertaken, it took less than half a day. If the full amount of work in the invoice was undertaken, it would have taken more than a day and would have required scaffolding or a high access unit which she would have seen on her return home. If in fact a ladder was used, the only work they are likely to have done is remove some plant debris from the roof area – hence the rubbish seen on the ground.

Conclusions

46. Of the points in dispute mentioned above, the Tribunal, having taken all the evidence and submissions into account, concludes that the views expressed in the discussion section above are correct on the balance of probabilities and finds accordingly.

47. As far as the emergency roof works are concerned, the Tribunal concludes, again on the balance of probabilities, that most, if not all of the work said to have been done in the invoice of Marios Louposki Builders was not in fact undertaken. Furthermore, the Tribunal considers that the work was urgent in 2014 when the report from A M Associates was available to the Respondent. Thus, to say that it was an 'emergency' some 3½ years later is difficult to understand. If the Section 20 work had been undertaken at the time, the PC sums in the Project Specification for the roof repairs was just £2,000. In view of all the circumstances, the Tribunal considers that none of the amount claimed is reasonable and/or payable.

48. As a result of this finding, the Tribunal considers that the charge from the managing agent for 'supervision' of these works is unjustified. The lack of any formal proof of evidence setting out how the supervision was undertaken and what work was actually seen to be done confirms that conclusion. As far as the Applicants are concerned, Mr. Babatunde in his statement at pages 125 and 126 sets out how he reported water dripping in to his flat (flat D) on no less than 9 occasions between 14th May 2018 and 8th May 2019. He says that at the Respondent's request he arranged

internal access to his flat on 5 further occasions on the 8th August, 3rd September, 5th September, 5th November 2018 and 5th February 2019.

49. Thus, the Tribunal finds that for the years 2018 and 2019 up to the transfer of the freehold, the amounts which are reasonable and payable in respect of the service charges are:

	£
Insurance premiums	1,004.75
Electricity	293.55
Fire alarm maintenance	192.00
Reactive contracting report	108.00
Insurance excess	350.00
Management fees	900.00
Out of hours helpline	204.42
	3,052.72

Sum payable by each flat is one fifth i.e. £610.54

50. In respect of the period 2014-2017, the 2019 decision sets out what each flat should have paid. This is conveniently set out in the court's determination relating to flat A in paragraph 8 on page A42. The amount payable for that period is £2,372.45 plus ground rent of £250.00 and an administration charge of £180 i.e. a total of £2,802.45. Strictly speaking, the ground rent cannot be the subject of this decision but the lease terms are clear.

51. For each individual flat, the position is as follows:

Flat A – as at the end of 2017, the service charge account was in credit in the sum of £875.98 (page A42). The amount payable for 2018 and 2019 is £610.54 which means that the account is in credit to the extent of £265,44 which should be repaid within 28 days.

Flat B – by order dated 25th September 2019 (page 39) the court determined the amount payable up to the end of 2017 including ground rent and administration charges. The amount payable by Mr. Murty for 2018 and 2019 is £610.54.

Flat C – as has been said, the 2019 decision determined that the amount payable for 2014-2017 was £2,372.45 plus ground rent, which was £450 in this case. On page A151, it appears that £6,124.68 had been paid over that period making the account £3,302.23 in credit after payment of ground rent. The administration charge is therefore not payable. For 2018 and 2019 the amount payable is £610.54 which means that the account is in credit to the extent of £2,691.69 which should be repaid within 28 days.

Flat D – in paragraph 59 of the 2019 decision, the Tribunal said, in effect, that £1,662.98 was due from Messrs. Babatunde and Sodola for a period from 2016 when they became the long leaseholders including a payment on account for 2018. Omitting the 2018 figure leaves an amount due of £838.78 plus ground rent. From page

A152, it appears that £1,473.25 has been paid and the ground rent figure due is £291.37 making a net credit of £343.10. For 2018 and 2019 the amount payable is £610.54 which means that the amount payable by Messrs. Babatunde and Sodola is £267.44.

Flat E – the figures for this flat are the same as for flat C save that the amount which appears to have been paid over the period from 2014-2017 is £3,824.60 making a credit of £1,002.15 after payment of ground rent. For 2018 and 2019 the amount due is £610.54 which means that the account is in credit to the extent of £391.61 which should be repaid within 28 days.

Costs

52. The only 'evidence' from the Respondent is a statement that time was spent on instructing solicitors (a) to give advice and (b) to represent the Respondent on a 'no win, no fee' basis. It is noted that as soon as the 'no win, no fee' solicitors started asking for money on account, their instructions were terminated. There is no evidence that any of the solicitors mentioned made any actual charge. In all the circumstances and bearing in mind particularly that the Respondent has not succeeded in respect of one large item of claim, the Tribunal makes orders under section 20C of the 1985 Act and paragraph 5A of the Schedule.

.....
Judge Edgington
16th March 2020

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

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

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