FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BN/LSC/2020/0071**
Property	**:**	**Flats 2&6, Brooklands Court, Middleton Road, Manchester M8 4JU**
Applicants	**:**	**JG & ME Property Investments Limited** **Sixonethree Limited**
Representative	**:**	**BBS Law Limited**
Respondent	**:**	**Brooklands Court Management Company (Manchester) Limited**
Representative	**:**	**O'Donnell Solicitors**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s27A**
Tribunal Members	**:**	**Tribunal Judge C Wood** **Tribunal Member S Latham**
Date of Decision	**:**	**5 November 2021**

DECISION

Order

1.]The Tribunal orders as follows:

(1) in respect of the service charge demand for £1200 dated 15 July 2019, ("the 2019 demand"), total costs of £5300 are "relevant costs" and chargeable as service charge;

(2) in respect of the service charge demand for £500 dated 14 August 2020, ("the 2020 demand"), total costs of £5940.39 are "relevant costs" and chargeable as service charge;

(3) the consultation requirements under s20 Landlord and Tenant Act 1985, ("the s20 requirements"), applied to both the 2019 demand and the 2020 demand;

(4) it is satisfied that it is reasonable to grant dispensation under s20ZA Landlord and Tenant Act 1985 from the s20 requirements in respect of the 2019 and 2020 demands;

(5) each of the Applicants is liable to pay 1/16th of the relevant costs in respect of the 2019 demand, which is £331.25;

(6) each of the Applicants is liable to pay 1/16th of the relevant costs of the 2020 demand, which is £371.27.

2. The Respondent has failed to comply with the requirements under s21B Landlord and Tenant Act 1985, and section 47 Landlord and Tenant Act 1987, but the Tribunal makes no order requiring the Respondent to re-serve the demands.

3. The Tribunal is satisfied that the Applicants have not acted unreasonably in bringing or conducting these proceedings and it makes no order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

4. In view of the orders made in paragraphs 1 and 3, the Tribunal determines that it is fair and equitable to grant the Applicants' application under s20C Landlord and Tenant Act 1985, so that all 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.

Background

5. By an application dated 21 August 2020, the Applicants sought a determination under s27A Landlord and Tenant Act 1985, ("the 1985 Act"), regarding the reasonableness and liability to pay a service charge of £1200 in respect of the service charge year ended 31 March 2020, and a service charge of £500 in respect of the service charge year ended 31 March 2021.

6. Directions dated 15 January 2021 were issued, pursuant to which both parties made written submissions and a remote video hearing was scheduled to take place on Monday 9 August 2021 at 10:30.

7. Mr.J.Goldblatt, director of JG&ME Property Investments Limited, and Mr.M.Eichler, director of Sixonethree Limited, attended the hearing for the Applicants together with their legal representatives, Mr.R.Rubin of BBS Law Limited and Mr.N.Taylor of Counsel.

8. Mr.J.Monath, Mr.A.Sheldon, Mr.M.Entwistle and Mr.A.Noyeh attended the hearing for the Respondent together with their legal representatives, Ms G.Williams of O'Donnells Solicitors and Mr.W.Goldstein of Counsel.

9. At the hearing a number of additional issues were raised by both parties and further directions, as agreed with the parties, were issued dated 9 August 2021 in order to allow both parties to make written submissions on these issues. It was also agreed that these matters should be determined by the Tribunal "on the papers" on 14 September 2021, in the absence of a request from either of the parties for a hearing.

10. Written submissions were received from both parties. No request for a hearing was received. The paper determination proceeded on 14 September 2021.

11. No inspection of the Property was undertaken.

The Law

12. **Section 27A of the 1985 Act**

(1) Section 27A(1) of the 1985 Act provides:

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) The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

(3) The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

(4) In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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.*

(5) "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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.*

(6) There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

(7) In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded

that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

13. **Section 20 and 20ZA of the 1985 Act**

(1) Section 20 of the 1985 Act provides for a limitation of service charges where the consultation requirements have not been followed.

(2) Section 20ZA of the 1985 Act provides as follows:

> *(1) Where an application is made to [the tribunal] for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.*

14. **Section 21A and 21B of the 1985 Act**

(1) Section 21B of the 1985 Act provides as follows:

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

(2) Section 21A of the 1985 Act provides as follows:

> *(1) A tenant may withhold payment of a service charge if-*
>
> *(a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21…*

15. **Section 47 of the Landlord and Tenant Act 1987, ("the 1987 Act")**

(1) Section 47(1) (a) of the 1987 Act provides that any written demand given to a tenant must contain, inter alia, the name and address of the landlord. Section 47(1)(b) provides that, where a demand does not contain such information:

> *…then…any part of the amount demanded which consists of a service charge…shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.*

16. **Section 20C**

(1) Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord 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 tenant or by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

Evidence

17. **Applicants' Submissions**

The Applicants' submissions are summarised as follows:

General

(1) the Application concerns the reasonableness of, and liability to pay, the 2019 demand and the 2020 demand, both of which were "cash calls" made in addition to the regular service charge;

(2) in respect of both demands, the following deficiencies were noted:

(i) a failure to particularise in sufficient detail the works for which the additional monies were requested;

(ii) a lack of quotes and comparative quotes;

(iii) a failure to reconcile the amounts demanded with the estimated and/or actual costs;

(iv) an unwillingness on the part of the Respondent by its directors/officers to respond to reasonable requests by the Applicants for greater information/clarification, including, in particular, to the letter dated 13 November 2019 from Mr.Eichler to Mr. Sheldon, ("the Letter").

Further issues

(3) In addition, issues were raised regarding:

(i) Mr.Entwistle's role as a director of the Respondent and his work as an electrical contractor to the Respondent leading to the appearance of a prima facie conflict of interest which had not been dispelled by the Respondent in response to enquiries from the Applicants;

(ii) in the context of the standard of works undertaken, the apparently limited role undertaken by Mr.A.Sheldon, appointed as the Administration Manager, in receiving, paying and recording invoices/payments but not extending to any oversight of the works themselves, or of any wider financial management;

(iii) the apparent inconsistency between the stated urgency in the demands, particularly the 2019 demand, to effect works under the Fire Risk Assessment dated 21 May 2019, ("the FRA") and the delays in actually undertaking those works, some of which remain uncompleted;

(iv) despite repeated assertions as to the availability and quality of supporting documentation, a failure to produce to the Applicants prior to the issue of the Application, and to the Tribunal in the course of these proceedings, documentary evidence regarding the Respondent's processes in respect of the

raising of service charge demands, obtaining of quotes, supervision of works etc;

(v) the limited assistance provided by the Respondent's statutory accounts as filed at Companies House because of their abbreviated nature;

(vi) the Applicants' non-receipt of the covering letter with the 2020 demand;

(vii) confusion because of an apparent "overlap" between works already agreed to be done at the 2019 AGM and for which monies had been raised by an increase in the monthly service charge, and their inclusion as works requiring additional monies raised by the 2019 demand.

The "technical requirements"

(4) s20 requirements:

(i) the s20 requirements apply in respect of both demands;

(ii) there has been no compliance, as acknowledged by the Respondent;

(iii) the identification of what constituted the "qualifying works" was hindered by the lack of detail in the demands but this could not be established by a "retrospective analysis" of invoices;

(iv) the Applicants had suffered prejudice by the loss of any opportunity to determine, in advance, whether the works were appropriate and/or what an appropriate cost was for them;

(v) the Respondent's small size and acknowledged lack of professional status were not justifications for non-compliance with statutory requirements;

(vi) Mr.Entwistle was clearly a "connected person" in this context; and,

(vii) although urgency in getting the FRA works done was cited as a justification for a lack of consultation, there had been significant delays in obtaining the 1st quotes and undertaking works, some of which still remain to be done 2 years after the FRA.

(5) section 21B of the 1985 Act and section 47 of the 1987 Act:

(i) these were statutory requirements with which, again, the Respondent had acknowledged a failure of compliance and with which the Tribunal had no power to waive.

(6) The reference to "technical requirements" should not be seen as diminishing their importance.

Costs

(7) Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, ("the Rules"):

(i) the Respondent's failure to respond to/engage with the Applicants, with particular reference to its failure to respond to the Letter, left the Applicants with little alternative to bringing the proceedings if a resolution of the issues was to be found;

(ii) there had been nothing unusual in the process of the Application to the point of its hearing;

(iii) there is no threshold or proportionality requirement for making a s27A application, but the demands were significant in amount in this case in any event;

(iv) the Applicants' conduct of its case at the hearing was a reflection of the Respondent's continuing failure to produce adequate documentary evidence to support its claims; and,

(v) reference is made to the Respondent's conduct in bringing a County Court claim against the Applicants after the issue of the Application.

Conclusion

(8) The Applicants' case in respect of the Application is summarised as follows:

(i) the lack of information available on the face of the 2019 and 2020 demands, and in respect of the cost/calculation of the cost of the works, and further the Respondent's lack of transparency/unwillingness to engage with the Applicants made it very difficult for them to determine if costs have been reasonably incurred and/or that works have been carried out to a reasonable standard, such that they comprise "relevant costs" under s19 of the 1985 Act;

(ii) the Respondent has failed in the proceedings to produce to the Tribunal adequate documentary and oral evidence to challenge the Applicants' claims in this respect;

(iii) the Respondent's approach appeared to be that leaseholders should accept what is said by the Respondent about what works needed to be done/when/by whom and at what cost. The statutory limitation of reasonableness within section 19 of the 1985 Act was designed to regulate such an approach; and,

(iv) it is no justification that the Respondent is not a professional management company.

18. **Respondent's Submissions**

The Respondent's submissions are summarised as follows:

General

(1) there has been a marked change in the focus of the Application from a question of the reasonableness and/or liability to pay the 2019 and 2020

demands to a more generalised attack on the probity of the Respondent and its directors/officers and on its standards of management; and,

(2) further and late in the day, the Applicants have raised various technical issues under sections 20 and 21B of the 1985 Act and section 47 of the 1987 Act.

(3) The Tribunal is invited to make a determination based on a narrow construction of the issues before it.

2019 and 2020 demands

(4) At the time of the 2019 AGM, the Applicants were both relatively new leaseholders.

(5) The Respondent's position as at that date (some of which was reflected in the AGM minutes) was that:

(i) it was operating at a deficit;

(ii) since 2018, there had been an ongoing programme of works, with substantial works still to be undertaken, estimated at a cost of c£22,000;

(iii) it was clear that the increase in the service charge to £125 per month would not be sufficient to pay for all of these works;

(iv) the order of priority for these works was agreed.

(6) The Respondent disagrees that:

(i) there was any obligation on it to seek prior authorisation and/or convene an interim meeting if further works were required to be done and monies required to fund them; and,

(ii) there was discussion regarding the existence and/or establishment of a sinking fund. There were never sufficient surplus service charge monies for this.

(7) The FRA needs to be looked at in this context. In particular:

(i) the need for urgent works under the FRA affected the prioritisation of works as agreed at/following the 2019 AGM;

(ii) there was acceptance in principle that all of the FRA works were required to be done but there were insufficient monies to carry them out which was the reason for the 2019 demand;

(iii) prioritisation of the FRA works was required: the quotes attached to the 2019 demand related to the most urgent matters but the amount demanded reflected an estimate of the cost of completion of all of the works. This fully addresses the Applicants' point regarding an apparent "mis-match" between the total value of the quotes and the total of the amounts demanded, rather than indicating anything untoward;

(iv) the Applicants' failure to understand this has fuelled their impression of being misled and given rise to their allegations of significant amounts of "missing" service charge monies; and,

(v) progress on completion of the FRA works has been hampered by some leaseholders not paying at all, e.g. the Applicants, and others being slow to pay.

(8) The Respondent has produced invoices in respect of the following:

(i) all of the works undertaken since the 2019 call which total £19584; and,

(ii) expenditure of £10824 since the 2020 call.

(9) These invoices do not reflect all expenditure spent on "routine matters" in the 2019/20 and 2020/21 service charge years.

(10) At the time the 2019 demand was made, the Respondent did not know the exact cost of the works but the imperative was to get them done. Seeking alternative quotes would have caused delay whilst using Mr. Entwistle enabled them to be done quickly and cheaply.

(11) A management company has a wide discretion in how it carries out its duties: the question is whether it acted reasonably. It does not have to adopt the "best course", and costs do not have to be reasonable per se but have to be reasonably incurred.

(12) The Respondent is not a professional management company and does not have the staff to obtain detailed costings. By using the services of Mr.Sheldon and Mr. Entwistle significant monies have been saved.

(13) The issues regarding value for money/quality had not been raised previously but are intrinsically connected to the allegations against Mr. Entwistle and should be ignored.

(14) With regard to the issue raised regarding a conflict of interest, there is no principle that prevents a landlord or management company from carrying out works itself unless there is evidence of a sham. The Applicants have not produced evidence to support this claim.

(15) The Respondent refutes the Applicants' claim that they did not receive the covering letter dated 14 August 2020 with the 2020 demand.

(16) The letter identified 3 separate items of expenditure, namely, (i) major drainage works; (ii) increased costs because of a change of gardener; and, (iii) ongoing FRA works.

(17) The £500 requested was an estimate based on the amounts already spent on the drainage works and the gardener, and an assessment of what was involved in the further FRA works.

(18) Again, in view of the urgency of these works, the Respondent did not consider it reasonable/necessary to undertake the additional work involved in obtaining alternative quotes.

The s20 requirements

(19) Having regard to the invoices produced to the Tribunal, the consultation requirements could only apply to the 2019 demand as there was no single "set" of works in respect of the 2020 demand in which the aggregate costs were at least £4000, being the relevant aggregate limit in this case.

(20) The urgency of the FRA works together with the limited resource available to the Respondent meant that undertaking a consultation exercise would have imposed an unreasonable administrative burden on it.

(21) There was no of evidence of prejudice suffered by the Applicants as a result of the failure to consult.

S47 of the 1987 Act

(22) Based on the authority of Tedla v Camaret Court Residents Association [2015] UKUT 221, s47 of the 1987 Act does not apply to demands made by management companies.

(23) The effect of a failure of compliance is suspensory, in any event, and does not affect the validity of the 2019 and 2020 demands.

S21B of the 1985 Act

(24) Non-compliance with the s21 requirements is acknowledged.

(25) Again, the effect of non-compliance is suspensory and does not affect the validity of the demands.

Costs

(26) The timing of the issue of the Application was premature.

(27) The change in the focus of the Application to a "manifestly personal attack on the character of Mr. Entwistle" was so irrelevant to the substantive issues, e.g. reasonableness and liability to pay, as to make it contrary to the overriding objective to use the proceedings for such a "mischievous purpose".

(28) The Tribunal should adopt a 3-stage process in determining whether the Applicants had acted unreasonably, as follows:

(i) Was their conduct objectively unreasonable?

(ii) Was it appropriate, in all the circumstances, for the Tribunal to make a costs order?

(iii) The quantum of any costs award was at the Tribunal's discretion.

19. **Evidence of Mr.A.Sheldon**

(1) Mr.A.Sheldon's oral evidence is summarised as follows:

(i) the quotes attached to the 2019 demand were estimates only; the final figure is only known when the works have been done;

(ii) the leaseholders understood what works were required following the discussions at the 2019 AGM, and subsequently as a result of the FRA;

(iii) the only quotes made available were those from JNC Property. The difficulty of getting written quotes from alternative contractors was explained;

(iv) he had not responded to the Letter because all of the information requested is in the accounts available to the leaseholders at the end of the year;

(v) with regard to the 2020 demand, the drainage works had to be done as quickly as possible. He had "no idea" at that point if they were covered by insurance but, in any event, was concerned by the time that an insurance company might take to deal with a claim;

(vi) it was subsequently ascertained that 2/3 of the cost of the works was covered by insurance;

(vii) there is always ongoing maintenance/repair to a property like this;

(viii) Mr. Monath inspects/verifies the works undertaken by Mr.Entwistle and Mr. Entwistle and Mr.Monath are responsible for sourcing alternative quotes; his job is restricted to administration; and,

(ix) he knows what a summary statement of rights and obligations is but has never sent one out and has never been asked for one.

20. **Questions of/responses by Mr.Monath**

(1) Mr. Monath's oral evidence is summarised as follows:

(i) appointed as a director in early 2015, he originally took a "backseat" role;

(ii) he did not know that there was any requirement for a sinking fund but there were insufficient funds to establish one in any event;

(iii) he and Mr. Entwistle, together with Mr.Sheldon, were responsible for establishing what works were required;

(iv) there was no need for a further meeting in October 2019 because it was generally understood that they needed to get on with the FRA works as a matter of urgency;

(v) FRA was received around 21 May 2019 (its date);

(vi) the delay in proceeding with the FRA works was because they had to wait for receipt of monies before going ahead;

(vii) quotes were obtained in order to formulate estimates of how much would be needed;

(viii) it was a collective decision with the other directors and Mr. Sheldon to request £1200;

(ix) he "inspects/signs off" Mr.Entwistle's work insofar as he checks that it has been undertaken but he has no qualification as an electrician enabling him to ensure that work has been done correctly;

(x) electrical works are sometimes signed off by a 2nd electrician as shown by one of the disclosed invoices;

(xi) it was acknowledged that there was often very little narrative on the invoices;

(xii) he was unsure if he had ever rejected a quote from Mr.Entwistle but he had on occasions sought a 2nd quote e.g. in respect of the security lighting;

(xiii) there are occasions when Mr.Entwistle does work for free;

(xiv) he was aware of the consultation requirements but had misunderstood them as thought that they applied to any item of work over £250. At the time, he considered that getting the works done was more important;

(xv) he was not aware of the statutory requirements under section 21 of the 1985 Act and section 47 of the 1987 Act.

Reasons

21. **Reasonableness– s27A**

(1) The Tribunal determined that:

(i) it was a reasonable expectation on the part of a leaseholder that, on receipt of a demand for money to meet "non-standard" service charge costs, the works and their cost (estimated or otherwise) were described in adequate detail;

(ii) a reasonable interpretation of the 2019 demand was that the monies requested were needed to meet the costs of undertaking the works required by the FRA;

(iii) a reasonable interpretation of the 2020 demand was that the monies requested were needed to meet the costs of the drainage works, the increased gardening costs and completion of the FRA works;

(iv) in the case of both the 2019 and 2020 demands, relevant costs to be taken into account are limited to those "reasonably incurred" for the works identified in those demands;

(v) for the avoidance of doubt, the costs of fencing and wall works and other works of repair and maintenance not identified as FRA works are not "relevant costs" in respect of the 2019 demand, and the costs of the same or similar works not identified as FRA works or drainage works are not "relevant costs" in respect of the 2020 demand;

(vi) as evidenced by the invoices produced by the Respondent, relevant costs in respect of the FRA works in the 2019/20 service charge year are £5300 and in the 2020/21 service charge year are £5220;

(vii) as evidenced by the invoices produced by the Respondent, relevant costs in respect of the drainage works in the 2020/21 service charge year are £2184;

(viii) the costs of the drainage works should be reduced by 2/3 to £720.39 to reflect the insurance payment subsequently received by the Respondent;

(ix) the Applicants had failed to produce any evidence in support of their claim that works had not been done to a reasonable standard;

(x) costs incurred in respect of the FRA works and the drainage works were chargeable as service charge under the terms of the lease of easements dated 7 February 1964, ("the Lease");

(xi) the Applicants were liable to pay 1/16th of "relevant costs" in accordance with the terms of the Lease.

(2) In making the determinations in paragraph (1) above, the Tribunal had regard to the following matters:

(i) the Tribunal considered that the most significant feature in this case was the Respondent's lack of professionalism, as acknowledged by the Respondent. From the evidence before it (both written and given in oral evidence), the Tribunal identified a situation of lay people undertaking roles within the Respondent's management without appearing to be being fully cognisant of the legal framework applicable to its role as a management company, including, in particular, in relation to the demand, collection and application of service charge monies;

(ii) the acknowledged ignorance of Mr.Monath and Mr.Sheldon in their oral evidence to the Tribunal of the statutory requirements of sections 20 and 21 of the 1985 Act and section 47 of the 1987 Act was illustrative of this;

(iii) the Tribunal accepted that there may be a prima facie question of conflict of interest regarding Mr.Entwistle's role as a director of the Respondent and a significant contractor to the Respondent;

(iv) there was no suggestion that there had been any failure by Mr.Entwistle to disclose his interest in Manchester Electrical;

(v) the evidence from the Respondent was to the effect that Mr. Entwistle, as a resident leaseholder and a director, was well-placed to provide services to the Respondent more cheaply/quickly than would be the case if a 3rd party contractor was engaged, and, in some instances, free of charge, i.e. that the arrangement was of benefit to the Respondent;

(vi) the Applicants' challenge to the standard of works undertaken appeared to be based on and/or limited to the fact that , in many instances, such works were undertaken by Mr.Entwistle but lacked any comparative evidence of comparable works undertaken at a lower cost or of any works undertaken by Mr. Entwistle being required to be re-done by reason of poor workmanship;

(vii) there was evidence of an absence of monitoring and scrutiny of works e.g. the absence of any routine "benchmarking" of costs through securing alternative quotes, the very limited narrative description of works undertaken on the figures invoices from Manchester Electrical and JNC Property Services and that they were always stated in "round" figures;

(viii) the Tribunal considered that the Respondent had adopted an unnecessarily defensive response to what were legitimate enquiries from the Applicants which appeared to have fostered many of their concerns/suspicions regarding the Respondent's management;

(ix) the Tribunal was unimpressed by the Respondent's failure to produce any evidence from Mr.Entwistle in view of the significant role he plays in the management of the Property, as a director, and, in respect of the works in issue, as a provider of service;

(x) on balance, the Tribunal considered that the inadequacies highlighted were the result of the lack of professionalism in the Respondent's management of

the Property rather than being evidence of any deliberate wrongdoing on the part of Mr.Entwistle or the Respondent; and,

(xi) lack of professionalism was not a justification for a failure of compliance with the law.

(3) In determining the total cost of the FRA works, the Tribunal had to make judgments regarding which costs to include based on the very limited information available to it on the face of the invoices produced in evidence by the Respondent.

(4) Attached as an annex to this decision is a list of the invoices included as "relevant costs".

(5) The copy of the Lease provided to the Tribunal was of poor quality and it was not clear that it was a complete copy. The Tribunal assumed that it was in a standard form in respect of all of the flats including, without limitation, Flats 2 and 6. Clause 5 of the Lease permitted charging as service charge all of the heads of expenditure in issue. Clause 6 provided that the liability of the leaseholder was for 1/16th of actual costs.

(6) The Respondent had not produced any invoices relating to the increased gardening costs.

22. **S20 consultation requirements**

(1) The Tribunal determined that:

(i) at the time of issue of the 2019 and 2020 demands, the s20 consultation requirements applied to both as each of the demands required a leaseholder to make a contribution in respect of the costs of works where the estimated cost of those works exceeded £4000;

(ii) as there had been a failure of compliance by the Respondent in respect of each of the demands, the contributions of the Applicants are limited to £250 in respect of each of the demands, subject to the Tribunal's determination on the Respondent's application for dispensation of the requirements under s20ZA, in paragraph 23 below.

(2) In making the determinations in paragraph (1) above, the Tribunal had regard to the following matters:

(i) it was clear that the consultation requirements imposed an obligation on a landlord **proposing to undertake** qualifying works to provide relevant

information regarding the works and their estimated costs in advance of undertaking them;

(ii) it was not open to the Respondent to establish the applicability or otherwise of the consultation requirements by a retrospective analysis of the costs actually incurred (although this may be relevant in relation to an application for dispensation); and,

(iii) Mr.Entwistle was clearly a "connected person" for the purposes of s20.

23. **S20ZA – application for dispensation**

(1) The Tribunal determined that:

(i) that the FRA works and the drainage works each comprised individual "sets" of works;

(ii) having regard to the actual costs incurred:

(a) the FRA works were "qualifying works" as the aggregate actual costs incurred were in excess of £4000;

(b) the drainage works were not "qualifying works" as the aggregate actual costs incurred were not in excess of £4000; and,

(c) no application for dispensation was required in respect of the drainage works accordingly.

(iii) it is satisfied that it is reasonable to dispense with the consultation requirements in respect of the FRA works.

(2) In making the determinations in paragraph (1) above, the Tribunal had regard to the following matters:

(i) the Respondent's claim of urgency as a justification for its failure to consult was not supported by the evidence that works had been undertaken over a considerable period of time and some works remained uncompleted;

(ii) the Respondent's small size and/or lack of professionalism did not constitute justifications for its failure of compliance;

(iii) at the time of the 2019 demand, and more so by the time of the 2020 demand, there was evidence before the Tribunal of the Applicants' concerns regarding the lack of information made available by the Respondent in respect of service charges and, in particular, the reasons for repeated "cash calls" of the kind made by the 2019 and 2020 demands;

(iv) it is therefore reasonable to assume that, if a consultation procedure had been initiated in respect of either of the demands, the Applicants would have sought further information regarding the works/their costs, and may have availed themselves of the opportunity to nominate a contractor and/or request the Respondent to obtain an alternative estimate from an unconnected person; and,

(v) in the absence of evidence of any financial or other tangible prejudice suffered by the Applicants, e.g., that the FRA works could have been undertaken more cheaply/in a more cost-effective way/to a better standard, the loss of this opportunity did not, of itself, constitute prejudice sufficient to justify the withholding of dispensation.

24. **Liability to pay- s27A**

(1) Having regard to its determinations in paragraphs 21(1) and 23(1) above, the Tribunal determined that the Applicants were liable to pay the following amounts:

(i) in respect of the 2019 demand, £331.25;

(ii) in respect of the 2020 demand, £371.27.

25. **Section 20C**

(1) In view of the Tribunal's determination in paragraph 24, the Tribunal determined that it was just and equitable in the circumstances to grant the Applicants' application under s20C of the 1985 Act, the effect of which is to determine that none of the costs incurred, or to be incurred, by the Respondent in these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicants, or either of them.

26. **The "technical requirements" – s21B of the 1985 Act and s47 of the 1987 Act**

(1) S21B: the Tribunal determined that:

(i) it was common ground that there had been a failure of compliance with s21B by the Respondent in respect of the 2019 and 2020 demands;

(ii) having regard to the words of George Bartlett QC, President of the Upper Tribunal in paragraph 13 of the decision in Beitov Properties Ltd v Martin, it was not satisfied that the raising of this issue by the Applicants went "to the

merits or justice" of the case, or that there was any evidence that the Applicants had been prejudiced by the failure of compliance. Specifically, the actions of the Applicants following the service of the 2019 demand demonstrated that they were already cognisant of their rights to challenge the reasonableness of service charges by making an application to the Tribunal;

(iii) no purpose would be served by requiring the Respondent to re-serve the 2019 and 2020 demands together with the accompanying summary statement of rights and obligations.

(2) S47 of the 1987 Act: the Tribunal determined that:

(i) if the purpose of s47 in the context of service charge demands was that a tenant knows the name and address of the person/entity responsible for the charging and collection of service charge, then, having regard to the terms of the Lease, the Respondent was properly to be regarded as the "landlord";

(ii) the situation in this case was again of the kind identified by the President of the Upper Tribunal in paragraph 13 of the Beitov case (which concerned s47 of the 1987 Act) referred to in paragraph 22(1)(ii) above, namely: "…there is nothing to suggest that the tenant wished to know the address of the landlord or was concerned that the address given in the demands might not be the right one or that he was prejudiced in any way by not knowing the address";

(iii) again it was not satisfied that the raising of this issue by the Applicants went "to the merits or justice" of the case, or that there was any evidence that the Applicants had been prejudiced by the failure of compliance;

(iv) no purpose would be served by requiring the Respondent to re-serve the 2019 and 2020 demands specifying the name and address of the reversionary freeholder which had no role in issuing demands for service charge.

27. **Order for costs - Rule 13(1)(b) of the Rules**

(1) The Tribunal determined that the Respondent had not established that the Applicants had "behaved unreasonably" in the bringing and/or conduct of the proceedings to justify the making of an order for costs under Rule 13(1)(b) of the Rules.

(2) In making the determination in paragraph (1) above, the Tribunal had regard to the following matters:

(i) the Tribunal was satisfied that in relation to the bringing of proceedings, the "timeline" from on or before the 2019 AGM in February 2019 until the issue of the Application in August 2020 demonstrated that the Respondent had both time and opportunity to respond to the Applicants' legitimate enquiries, and that, if it had done so constructively, it might have prevented the making of the Application;

(ii) the Applicants' email of 24 August 2020 made it clear that, notwithstanding the response from the Respondent's solicitors, many of their questions/enquiries remained unanswered;

(iii) the Respondent's proposition that there is some kind of a financial "threshold" on the making of a s27A application to the Tribunal is rejected, although it may inform the way in which the parties approach those proceedings and/or the case management of the application by the Tribunal;

(iv) the Tribunal was not satisfied that the Applicants had "behaved unreasonably" in its conduct of the proceedings by raising issues regarding the management of the Respondent and the roles of its directors/administration manager because:

(a) there was a sufficient nexus between these issues and the question whether costs had been "reasonably incurred" and whether works had been done to a "reasonable standard" which are integral to any determination of "reasonableness";

(b) the Respondent's generally defensive attitude and lack of transparency in response to the Applicants' questions/enquiries had significantly contributed to the Applicants' suspicions regarding the Respondent's processes in relation to the demand for, and application of, service charge monies, which was reflected in the framing of their case before the Tribunal.

(v) In the circumstances, the Tribunal did not regard the Applicants' behaviour as "objectively unreasonable" and no award of costs was appropriate in such circumstances.

Tribunal Judge C Wood

5 November 2021

Annex to the Order dated 5 November 2021

List of invoices included as "relevant costs"

Annex 2 invoices

FRA works

Q-109
Q-114
Q-121
Q-125
Q-127
Q-131
Q-136

Annex 3 invoices

Drainage works

R-138

FRA works

R-140
R-141
R-144
R-146
R-147
R-148
R-151
R-152
R-153
R-155
R-156
R-158