FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AS/LSC/2022/0216**
Property	**:**	**Flats 2, 6 and 18, Regency Court, Regency Drive, Ruislip, London HA4 7EE**
Applicants	**:**	**Flat 18 Ms S Wratten** **Flat 6 Mr K Harrington** **Flat 2 Ms I Patel**
Representative	**:**	**Mr H Elliott (Flat 18), Mr A Patel (Flat 2) and Mr K Harrington**
Respondent	**:**	**Regency Court (Ruislip) Residents Association Limited**
Representative	**:**	**Mr C J Brown**
Type of application	**:**	**For the determination of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge H. Lumby** **Ms M. Krisko FRICS** **Ms J Dalal**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**12 June 2023**
Date of decision	**:**	**10 July 2023**

DECISION

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Description of hearing

This has been a face-to-face person hearing. The documents that we were referred to are in a bundle of 210 pages, the contents of which the tribunal have noted.

Decisions of the tribunal

(1) The tribunal determines that no sum is payable by any of the Applicants in the service charge year ending 31 March 2019 in respect of roof repairs.

(2) The tribunal determines that the £1,260 charged in the service charge year ending 31 March 2021 in respect of professional fees is payable and reasonable.

(3) The tribunal determines that the reasonable amount payable in respect of the roof repair works charged in the service charge year ending 31 March 2022 is £10,428.20, to be payable in the proportions provided by the Applicants' leases.

(4) The tribunal determines that the amounts charged in respect of tree works in the service charge year ended 31 March 2022 are reasonable and payable provided that all receipts from the insurers in respect of those works are credited to the service charge when received.

(5) The tribunal makes no determination in relation to the possible further roof works which may be carried out at the Property.

(6) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's or the management company's costs of the tribunal proceedings may be passed to the Applicants as lessees through any service charge.

(7) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Applicants' Leases.

(8) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") the tribunal also orders the Respondent to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00 within 21 days of the date of this decision.

(9) The tribunal makes no order under paragraph 13(1) of the Tribunal Rules.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2019, 2021 and 2022 as well as potential future charges in 2023. The total amount stated to be in dispute is £27,216.60.

The hearing

2. Mr Elliott, Mr Harrington and Mr Patel appeared on behalf of the Applicants at the hearing. The Respondent was represented by Mr Brown in his capacity as sole director of the management company. He is also the proprietor of the managing agents, Brown and Partners.

The background

3. The Property is a purpose built block of ten flats. The Applicants are all leaseholders of the Property. Services are provided by the Respondent as management company. The Property is managed by Brown and Partners on behalf of the Respondent; the proprietor of Brown and Partners is the sole director of the management company.

4. Each of the leaseholders holds a long lease of the property which requires the management company to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease of Flat 2 will be referred to below, where appropriate. It is understood that the leases are all in the same form.

5. The three flats in this case are held as follows:

   (a) Flat 18 – Ms S Wratten

   (b) Flat 6 – Mr K Harrington

   (c) Flat 2 – Mrs I Patel

The issues

6. The issues in this case largely relate to roof repair works carried out to the Property over several years. The Applicants have raised issues over the quality of works done, whether a consultation was carried out in relation to them and future roof works. There was also a query relating to an insurance claim for damage caused by a fallen tree.

7. The relevant issues for determination in respect of the relevant service charge years ending 31st March are as follows:

   (i) 2019

a. Roof repairs - £6,700

(ii) 2021

a. Professional fees (roof works) - £1,260.00

(iii) 2022

a. Roof works and repairs - £11,427.60

(iv) 2023 (future works)

a. Roof repair - £7824.00

Tribunal analysis

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the remaining issues as follows.

Lease provisions

9. The lease of Flat 2 is dated 14th May 1982 and is for a term of 99 years from 25th December 1981. The lease provides for interim and final service charge to be payable, calculated in accordance with the Fifth Schedule of the lease. It provides for a service charge year ending on 24th December. In practice the parties appear to be operating on a service charge year ending 31st March. This is in any event not an issue in this case.

10. Clause 6 of the lease requires the management company to comply with various covenants including:

"(a) To maintain and keep in good and substantial repair and condition

(i) the main structure of the Building including the principal timbers girders and supports thereof and the exterior walls and the foundations and the roof and roof space thereof with main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat in the Building)

...

(vii) all other parts of the Building not included in the foregoing sub-paragraphs (i) to (v) and not included in this demise or the demise of any other flat or in the demise of any other part of the Building

11. The Service Charge payable comprises the applicable percentage of the Total Expenditure; this is defined in the Fifth Schedule of the lease as:

"the total expenditure incurred by the Management Company in any Accounting Period in carrying out its obligations under Clause 6 of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including inter alia and without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents and Solicitors (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable hereunder…"

12. These provisions allow for the landlord to charge for the items in dispute pursuant to the leases.

Law

13. The service charge provisions contained in a residential lease must be read subject to the effect of the 1985 Act. Section 18 of the 1985 Act defines "*relevant costs*" as including payments for services and management, and under section 19 of the 1985 Act "*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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard*".

14. Any service charge sum certified as payable under the Leases is therefore still subject to section 19 of the 1985 Act and is only payable to the extent that it has been reasonably incurred and the service in question is of a reasonable standard.

Roof repairs in service charge year ending 31 March 2019

15. The works in question relate to repairs to a top floor flat in 2019 caused by a leak. The leaseholder of the relevant flat - Mr Cardus - was also a director of the management company at the time. He authorised the carrying out of the relevant works and the authorisation of a £3,000 on account payment for the works. The contractor (SC Roofing) attended the same day and carried out repair works.

16. The Applicants argue that (given their cost) these works should have been the subject of consultation pursuant to the 1985 Act or alternatively the management company should have applied for dispensation pursuant to section 20ZA of that Act. No consultation took place and no dispensation has been applied for or given - as a result the amount recoverable from each leaseholder should be capped at £250 per leaseholder.

17. The Respondent accepts that there was no consultation and no application for dispensation had been made to date. His explanation was that he thought it was not possible to apply for dispensation during the COVID pandemic, perhaps missing the point that the works preceded the pandemic.

18. Section 20 of the 1985 Act limits contributions tenants can be required to pay where the costs exceed specified levels, unless either a consultation has occurred or a dispensation has been given by the tribunal. In this case, the specified level is £250 per tenant. The largest percentage for any flat as a proportion of the whole is Flat 18 with a percentage of 12.221%; this would mean that any works in excess of £2,046 would require a consultation. The cost of the works here at £6,700 were substantially in excess of this threshold and should therefore have been subject to consultation or dispensation obtained.

19. The tribunal therefore determines that the maximum payable per Applicant as a contribution towards these works is £250 each.

20. However, it also needs to be considered whether a charge of £250 is reasonable for the purposes of the 1985 Act.

21. The tribunal finds that the works carried out in 2019 were of very low quality and did not fix the issue. Faced with more leaking, Mr Cardus (the leaseholder of the flat with the leaks) commissioned a report in 2021 from a surveyors called Lawrence-Vacher LLP. The report details failings in the 2019 works, concluding that they were unsuccessful, necessitating further works in 2021 (referred to below). By way of example, the report stated:

“The repairs with glass fibre externally are not in accordance with good roofing practice, are unsightly and distract significantly from the appearance of the roof. Any attempt to remedy the leaks into the roof using mastic or other materials internally must fail as it is necessary to prevent the water entering the structure rather than trying to catch or divert it on the inside.”

It went on to say:

“It will be necessary to remove some of the ridge tiles in order to renew the verges and to ensure water tight detailing at the junction where the dormer verges meet the ridge. All the ridge tiles coated with fibre glass should be discarded and replaced.”

22. The Applicants raised queries at the time as to the quality of the works but Mr Brown as managing agent did not respond to these. He told the tribunal that he did not inspect the works, merely relying on the leaseholder to do so.

23. No attempt was made to remedy the defects or pursue SC Roofing in respect of them. Mr Brown's explanation of this inactivity was that he wanted to await the outcome of this case first and had six years to act. The fact that the works needed replacing in 2021 suggests that necessity required a rather quicker timescale for action. He also did not know whether any warranty was obtained in respect of the works or indeed why an insurance claim was not made in respect of the leak in the first place.

24. The tribunal therefore determines that the works carried out in 2019 were of low quality and caused more issues, necessitating further works in 2021. If the managing agent had sought to claim on the insurance policy in relation to the leak and/or insisted on a warranty and enforced on this or had otherwise in any way enforced its rights against the contractor, the position might have been mitigated. It is unreasonable to expect the leaseholders to pay for the same works twice and therefore they should not be obliged to contribute towards these works.

25. The tribunal therefore determines that no amount is payable by the Applicants in respect of the 2019 roof repair works.

Professional fees for roof works for service charge year ending 31 March 2021

26. A total of £1,260 was charged in the service charge year ending 31 March 2021 in respect of professional fees. The Applicants had queried this amount as no information had been provided.

27. These were explained by the Respondent as comprising two invoices, both payable to Lawrence-Vacher LLP. Copies of the invoices were provided to the tribunal. The first was for £660, was dated 8 December 2020 and related to the carrying out the inspection referred to above and reporting on the cause of the ongoing damp ingress. The second was for £600, was dated 8 January 2021 and related to the preparation of a specification of repairs to the dormer roofs and the gable wall, being essentially the works required to remedy the identified roof issues.

28. The Applicants accepted that the amounts were reasonable and payable.

29. The tribunal therefore determines that the £1,260 charged in the service charge year ending 31 March 2021 in respect of professional fees is payable and reasonable.

Works for service charge year ending 31 March 2022

30. Following the preparation of the Lawrence-Vacher LLP report and the related specification, the Respondent began to implement the recommended works. These amounted to £11,427.60 for the service

charge year ending 31 March 2022. The Applicants have queried this amount, as well as the consultation process.

31. Evidence has been provided by the Respondent of a consultation process having been carried out. A first stage consultation was carried out on 9 March 2021. The Respondent stated that no comments were received on recommendations on contractors but three replies were received; details of these were not provided. Details of the quotations received were sent to the leaseholders on 2 May 2021 as the second stage consultation.

32. Having reviewed the papers related to the consultation and heard from the parties, the tribunal finds that, notwithstanding some gaps in the evidence, the consultation was sufficient for the purposes of section 20 of the 1985 Act.

33. The tribunal then considered the actual amounts charged by the contractor. It had provided a quotation of £9,994. The actual works costs slightly more as there was an additional charge of £840 for extra lead saddles and £300 for cladding works. It has not been possible to ascertain how the higher total of £11,427.60 was reached but it accepts that this was the correct amount paid.

34. The costs of the works are recoverable pursuant to the leaseholder's service charge. The works were tendered and there is no evidence provided to suggest that the amounts charged were not reasonable. However, the tribunal is concerned that elements of the works were incurred remedying damage caused by the 2019 works. It is not reasonable for the leaseholders to have to pay for work which caused damage to the Property. This should have been recovered from the contractor for those original works but no steps have been taken to do so. In view of that failure, the tribunal considers that a sum equal to 10% of the original estimate should be deducted to cover this element; this is £999.40. Deducting this from the £11,427.60 shown in the accounts gives an amount of £10,428.20.

35. The tribunal therefore determines that the reasonable amount payable in respect of these works is £10,428.20, to be payable in the proportions provided by the Applicants' leases.

36. The Applicants also raised issues in relation to costs relating to tree works in this service charge. The accounts show a sum of £1,730 which related to works to repair damage caused by a fallen tree. Mr Brown explained that it had been claimed through the service charge because he had not been aware that it was recoverable pursuant to the insurance. However, a claim had now been made and all amounts recovered would be credited to the service charge. The Applicants accepted the amount charged in relation to tree works subject to any receipts from the insurers being so credited.

37. The tribunal determines that the amounts charged in respect of tree works in the service charge year ended 31 March 2022 are reasonable and payable provided that all receipts from the insurers in respect of those works are credited to the service charge when received.

Roof repair works anticipated for service charge year ending 31 March 2023

38. By a letter to leaseholders dated 20 January 2022, the management company informed the leaseholders of further anticipated costs to make good another part of the roof needing similar structural repairs to those carried out in the previous year. These were estimated to have a cost of £7,824. The Applicants were concerned that the delay in carrying out the works might increase their costs, for example as a result of the need to re-provide scaffolding.

39. These works have not yet been carried out. They would require either a consultation with the leaseholders in accordance with section 20 of the 1985 Act or dispensation from the tribunal pursuant to section 20ZA, otherwise the management company's right to recover the costs would be limited to £250 per tenant. No consultation has yet been carried out or application for dispensation made.

40. The costs of the works should otherwise be recoverable from the leaseholders pursuant to their service charge provisions, subject to the requirements of section 19 of the 1985 Act being satisfied.

41. The tribunal did note the Respondent's comment that there was a reserve fund in relation to works to the Property and that this is understood to have a current balance in excess of the cost of these works (the figure of £8,300 was mentioned). The Respondent may wish to consider utilising this to pay for these works, subject of course to have going through appropriate consultation or obtained suitable dispensation.

42. Given the position, the tribunal is not able to make any determination in relation to these works at this stage.

Service of demands

43. The service of demands for payment has not been raised an issue in this case, nor is it likely to be one when all sums demanded have in any event been paid. The tribunal did however review whether the demands made were in compliance with the relevant statutory provisions.

44. Section 47 of the Landlord and Tenant Act 1987 requires invoices to identify the name and address of the Landlord and the relevant sum is not payable until this is provided. In this case, the invoices we have seen do not appear to contain this information.

45. In addition, section 21B of the 1985 Act requires that any demand for payment should be accompanied by a "Summary of Tenant's Rights and Obligations". Again, these do not appear on the face of the information provided to have been served with the invoices we have seen. Sums demanded are not payable until these are provided.

46. The Respondent is advised to ensure that these requirements are complied with going forward.

Applications under s.20C and paragraph 5A

47. The Applicants has applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

48. The relevant part of Section 20C reads as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier 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 tenant…".

49. The relevant part of Paragraph 5A reads as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

50. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under the Lease.

51. In this case, whilst much has been conceded by the Applicants, this is only as a result of the late engagement by the Respondent. Earlier engagement and better communication by the Respondent could well have avoided the need for this case to be brought to the tribunal. In addition, the Respondent assured the tribunal that none of its costs would in any event be charged to the Applicants. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

The tribunal therefore make an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

52. For the same reasons as stated above in relation to the Section 20C cost application, the Applicants should not have to pay any of the Respondent's costs in opposing the application. The tribunal therefore makes an order in favour of the Applicants that, to the extent that the same are chargeable as administration charges pursuant to the lease, none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under their Lease.

53. The Applicants have also applied for an order under paragraph 13(2) of the Tribunal Rules for the Respondent to reimburse its application and hearing fees (£300.00 in total). Under that paragraph the tribunal "may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party ...". The Applicants would not have had to bring this case if the Respondent had engaged properly with the parties and communicated with them. It is entirely appropriate in the circumstances for the Respondent to reimburse these fees, and accordingly we order the Respondent to reimburse these fees to the Applicants.

54. Finally, the Applicants have also applied for an order under paragraph 13(1) of the Tribunal Rules ("Rule 13(1)") for the Respondent to reimburse various other fees incurred by them in connection with this application, amounting to £101.36. The relevant part of paragraph 13(1) provides that *"The Tribunal may make an order in respect of costs ... if a person has acted unreasonably in ... defending or conducting proceedings in ... a leasehold case ..."*.

55. The leading case on Rule 13(1) is the decision of the Upper Tribunal in Willow Court Management Ltd v Mrs Ratna Alexander [2016] UKUT 290 (LC). In Willow Court, the Upper Tribunal prescribed a sequential three-stage approach which in essence is as follows: (a) applying an objective standard, has the person acted unreasonably? (b) if so, should an order for costs be made? and (c) if so, what should the terms of the order be?

56. The first part of the Rule 13(1) test, namely whether the person acted unreasonably, is a gateway to the second and third parts. As to what is meant by acting "unreasonably", the Upper Tribunal in Willow Court followed the approach set out in Ridehalgh v Horsfield [1994] EWCA Civ 40, [1994] Ch 205, albeit adding some commentary of its own, and stated (in paragraph 24) that *"unreasonable conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different*

ways. Would a reasonable party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test" [in Ridehalgh]: is there a reasonable explanation for the conduct complained of?".

57. In the present case, the Respondent's approach (and especially its lack of engagement and communication) meant that the Applicants had to resort to the tribunal to obtain information and achieve resolution. However, whilst clearer and more positive engagement might have been helpful to the Respondent himself or to the process generally, we do not consider that his failure to engage amounts to unreasonable conduct for the purposes of Rule 13(1) under the first stage of the Willow Court test. And whilst there is some evidence of unreasonable behaviour on the part of the Respondent in his dealings with the Applicants prior to the making of this application, Rule 13(1) is only concerned with conduct in relation to the proceedings themselves, i.e. once the application has been issued to the Respondent.

58. Accordingly, we do not accept that the Respondent's conduct warrants a cost order against it pursuant to Rule 13(1).

Name: Judge H Lumby **Date:** 10 July 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).