FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BD/LSC/2022/0165**
HMCTS code	**:**	**Face-to-face Hearing**
Property	**:**	**Flat 5 Gordon House, 9 Cardington Road, Richmond, Surrey, TW10 6BJ**
Applicant	**:**	**Margot Hooley**
Representative	**:**	**In person**
Respondent	**:**	**Gordon House Residents Association Limited**
Representative	**:**	**Katherine Flannery (director)**
Type of application	**:**	**Payability and reasonableness of service charges and administration charges**
Tribunal members	**:**	**Judge Robert Latham** **Judge Sarah McKeown** **John Naylor MRICS FIRPM**
Date and Venue of hearing	**:**	**6 February 2023 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**21 March 2023**

DECISION

Decisions of the tribunal

(1) The Tribunal is satisfied that the insurance premiums demanded for the years 2018 to 2021 are reasonable and payable.

(2) Subject to some minor deduction, the Tribunal is satisfied that the service charges demanded for 2020 and 2021 are reasonable and payable. The Tribunal makes the following adjustments:

(i) £345 in respect of auditing the accounts for the Respondent Company (see [84] of the decision);

(ii) £137.50 in respect of the subscription to the Federation of Private Residents' Association (see [87])

These are costs which should be borne by the Respondent Company in respect of which each lessee has a 20% share.

(3) The Tribunal finds that the Applicant is entitled to the following set-offs:

(i) £60 in respect of damage to her decorations (see [69]).

(ii) £1,010 in respect of damage caused by water ingress (see [70] below).

These are costs to be borne by the Respondent Company

(4) The Tribunal finds that the administration charge of £210 + VAT is not currently payable (see [88] below).

(5) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985. Neither does it make any order for the refund of the tribunal fees paid by the Applicant.

Bundles

The parties have provided the following documents to which reference is made in this decision:

Applicant
(i) Skeleton Argument
(ii) Bundle of Documents (1,017 pages). Reference: "A1___"
(iii) Bundle of Authorities (615 pages): Reference: "A2.___")

Respondent
(i) Skeleton Argument
(ii) Bundle of Documents (514 pages). Reference: "R1___"

The Application

1. The Applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether administration charges are payable and reasonable. She also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish her liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

2. Gordon House ("the Property") is a five-storey semi-detached building constructed in the 1890's. In the 1980s, it was converted to create five flats. The leaseholders are:

   (i) Flat 1: Ms Katherine Flannery which she occupies with her partner, Mr Ken Hunnisett.
   (ii) Flat 2: Ms Nick Martin.
   (iii) Flat 3: Ms Kirsty Walker.
   (iv) Flat 4: Ms Harriet Webster and Mr Alex Tanner.
   (v) Flat 5: Ms Margot Hooley, the Applicant.

3. All the tenants are members of the Respondent company. The directors are currently Ms Flannery and Ms Walker. Flat 5 is on the top floor.

4. On 24 May 2022, Judge Silverman gave Directions and set the matter down for hearing on 13 October 2022. The Directions required the Applicant to send the Respondent a Scott Schedule (i) identifying the service charges in dispute, (ii) specifying the reason(s) that it is contended that it is not payable or is unreasonable; and (iii) stating the amount that the tenant would be prepared to pay. A template for the Scott Schedule was attached to the Directions. The Applicant was also required to send (i) any alternative quotes or documents on which she sought to rely, (ii) a Statement of Case (if not included in the Scott Schedule, and (iii) any witness statements.

5. On 5 October 2022, the Respondent applied to strike out all or part of the application pursuant to Rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") on the grounds that the applicant had failed to comply with the Directions. She had filed a Bundle of Documents extending to 1,497 pages which included a Scott Schedule of 104 pages. This raised issues which had not been raised in the application form. She had added a fifth column to the Scott Schedule for which no provision had been made in the Directions and to which the Respondent had had no opportunity to respond. She had also filed a second witness statement which extended to 33 pages which was not the "brief supplementary reply" contemplated by the Directions. Alternatively, the Respondent asked the Tribunal to vacate the hearing and issue new directions.

6. On 7 October 2022, Judge Vance vacated the hearing fixed for 13 October and set the matter down for a Case Management Hearing ("CMH"). He anticipated that the Tribunal would wish to scrutinise each entry in the Scott Schedule and identify what matters are within scope of this application and whether any jurisdictional issues arise that may preclude a challenge. It would also wish to consider what documents, if any, should be removed from the hearing bundle. The Tribunal would also need to consider what order to make, if any, on the Respondent's strike out application.

7. On 13 October 2022, the CMH was listed before Judge Latham and Judge McKeown. The Applicant attended the CMH assisted by Ms Natalie Weavers. The Respondent was represented by Ms Flannery who was assisted by Mr Hunnisett. The Tribunal referred the parties to the "Overriding Objective" in the Tribunal Rules namely for the tribunal to determine any application fairly and justly dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal. The Tribunal noted that it was used to dealing with litigants in person and issued Directions to ensure that any application could be determined fairly and in a proportional manner. The Tribunal expected parties to comply with its Directions. The purpose of the Directions was to narrow down the issues in dispute. It was not open to a party to change or expand its case without the permission of the Tribunal.

8. The Tribunal declined to strike out the application. However, we made it clear that the tribunal would do so if the Applicant did not strictly comply with our Further Directions. The Tribunal sought to clarify the service charge items which were in dispute. The Tribunal had regard to two documents which had been filed by the Applicant: (i) her application form and (ii) the Scott Schedule. The Tribunal struck out any item which had not been included in both documents. The Tribunal further struck out the 5th Column which the Applicant had added to the Scott Schedule. We also refused the Applicant permission to rely on her second witness. The Directions had made no provision for these. The Tribunal expressed our concern that the Applicant was ever widening the issues in dispute.

9. The Applicant has filed a revised Scott Schedule. This still extends to 54 pages, albeit that this includes a number of deletions which have been made pursuant to our Directions. The Bundles still exceed 1,500 pages.

10. The Tribunal was concerned that the lease made express provision requiring the Respondent to employ managing agents in connection with the running and management of the Property. On 6 June 2022 (in LON/00BD/LAM/2020/0014), a First-Tier Tribunal ("FTT") had found the Respondent to be in breach of this of this obligation. We required the Respondent to explain why no managing agents had been appointed.

11. In their Statement of Case (at R.315), the Respondent states that it held a general meeting on 14 November. The Applicant declined to attend. The lessees/shareholders of the four other flats unanimously agreed that they wanted to continue to self-manage the Property. They gave two reasons. First, the cost of employing managing agents. Secondly, some of the lessees do not reside in their flats. They are comforted that the Property is managed by lessees who live in the Property who are able to coordinate access and monitor the quality of any works that are executed.

12. The Respondent has served a Statement of Account (at R.322-3). This records that on 31 October 2022, the Applicant had outstanding arrears of £7,837.04. This does not include an interim demand for 2023 which was served on 23 December 2022. The Respondent has only managed to remain solvent through loans made by two lessees.

13. On 30 December, the four other lessees applied to be joined as parties to this application. Although their primary case is that all the sums demanded have been reasonable and payable, they have sought to protect their position should this Tribunal disallow any item. The effect of this is that any such reduction would be borne by the five lessees as shareholders of the Respondent Company, rather than as lessees under their leases. On 6 January 2023, Judge Vance refused this application on the grounds that this is not necessary. Where the Tribunal disallows any item raised by the Applicant, it would be open to the Respondent Company to make similar provision in respect of any other lessee who is required to pay the same charge.

14. Each lessee is required to pay 20% of any service charge expenditure. Each lessee also owns a single share in the Respondent Company. We were told that under the Respondent's Articles of Association, each shareholder is required to contribute 20% to any sum required by the Company to keep it solvent. It is therefore difficult to see what the Applicant seeks to achieve through her application.

The Hearing

15. The Applicant, Ms Margot Hooley, appeared in person. She was assisted by Ms Natalie Weavers. Ms Hooley is a teacher at a Sixth Form College,

16. The Respondent was represented by Ms Flannery. She was assisted by Mr Hunnisett, her partner. Ms Kirstie Walker, a director of the Respondent Company, also attended. This Flannery is Head of Finance at a bank. Mr Hunnisett works for an investment management firm which promotes sustainable heating.

17. It was apparent that Ms Hooley does not understand the legal structure under which she occupies her flat. She did not accept that Ms Flannery and Ms Walker were seeking to manage the Property in the best interests

of the five lessees/shareholders. They are not remunerated for their work. Her response was that "they don't want to abide by the rules".

18. The Tribunal explained that any item disallowed as a service charge item, would be borne by the Respondent Company and would be chargeable to the shareholders. Ms Hooley suggested that this would nullify the protection provided by 1985 Act. It was an issue that she would take to the Supreme Court.

19. The Tribunal invited each party to make an opening statement. Ms Hooley stated that she had spent some £75k in her disputes with the Respondent. She had acquired her lease in Flat 5 in 2005. She loved her flat. She described herself a "street kid" who was brought up "with toe nails wrinkled because of poverty and malnutrition". She described her neighbours as "rich kids". She added that "poor people abide by the rules, but rich people don't". It was probable that she would now have to sell her flat as she could not cope with the current situation that had arisen. This made her really sad as she loved her flat.

20. Mr Hunnisett described the situation that had arisen as "a tragedy". He found it distressing to her Ms Hooley so upset. The tenants had had "three ungodly years". Ms Tanner had sought to sell Flat 4 because of the situation that had arisen. Two sales had fallen through because of all the infighting. Mr Hunnisett and Ms Flannery have had to struggle during the Covid lockdown to care for and educate their daughter. However, they have faced a volley of legal letters and numerous unsubstantiated claims. They have sought to comply at considerable cost to the lessees. The accounts have now been certified as required by the lease, at a cost born by the lessees. Revised invoices have been submitted. The directors have asked Ms Hooley to identify where they have got things wrong so that they can rectify this. Ms Hooley has declined to engage with them.

21. At the start of the hearing, the Tribunal provided the parties a Scott Schedule of five pages which sought to summarise the service charge items which the Applicant disputes. The Tribunal worked through this Schedule, item by item giving both parties the opportunity to summarise their cases. It was apparent that some of the complaints related to adjustments to the accounts, rather than service charge items that the Applicant had been required to pay.

22. Ms Hooley sought to submit a number of additional documents. The Tribunal refused to admit these. She also sought to raise a number of arguments outside the scope of the issues raised in her Scott Schedule. Again, the Tribunal was not willing to entertain this. She submitted a Bundle of Authorities extending to 514 pages. At pages 5-13 she seeks to identify the legal principle that she seeks to extract from the case. She also provided a Skeleton Argument.

23. In our decision, we have focussed on the documents and authorities to which we were referred during the course of the hearing. It does not assist Ms Hooley's case that she has sought to drown the Tribunal in a mass of papers. On 8 February, the Tribunal reconvened to consider our decision.

The Applicant's Lease

24. The Applicant occupies her flat under a tripartite lease dated 3 July 1989 between (i) Moss Circle Limited: the Lessor; (ii) the Respondent: the Management Company and (iii) the Tenant. The lease is for a term of 125 years from 1 January 1989. The Respondent has subsequently acquired the freehold/landlord interest.

25. By Clause 2, the Lessor covenants to insure the Property. By Clauses 1(2) and 3(1), the Tenant covenants to pay the insurance contribution. By Clause 3(2), the Tenant covenants:

> "that a certificate of the cost of the insurance of the Property pursuant to clause 4(2) hereto issued by an Accountant as appointed by the Lessor from time to time shall be conclusive of the amount of the insurance of the Property and the amount to be paid by the Tenant (except in the case of manifest error)".

26. By Clause 4(3), the Tenant covenants to pay "the Maintenance Contribution" on 1 January of the relevant Maintenance Year and also a due proportion of any Maintenance adjustment. The Maintenance Year is the calendar year. The Tenant (and the other tenants in the Property) are to pay a 20% proportion. The Third Schedule provides for the Computation of the Annual Maintenance Provision. Thus, the Annual Maintenance Provision is payable of 1 January. This may include a contribution towards a reserve fund. After the end of the Maintenance Year, there is to be a Maintenance Adjustment to determine the extent to which the actual expenditure exceeds or is less than the budgeted expenditure. The Tenant is required to pay on demand any shortfall or is entitled to a refund in respect of any surplus. The amount of the Annual Maintenance Provision and Maintenance Adjustment shall be ascertained and certified by a Chartered Accountant or a Certified Accountant.

27. The Fourth Schedule specifies the services and the purposes for which the Annual Maintenance Provision is to be applied. This includes:

> "(9) to employ a Firm of qualified Accountants to prepare all audit and accounts and to prepare and issue certificates as to the amount of any Annual Maintenance Provision and any Maintenance Adjustment.

(10) to employ a Managing Agent or Agents in connection with the running and management of the Property or any of the above matters and to pay all proper costs relating to the employment thereof and the payment of their reasonable and proper fee".

28. The employment of qualified accountants and managing agents inevitably increases the costs of managing the Building. It is open to the lessees to agree to waive these requirements. However, Ms Hooley is adamant that the Property should be strictly managed in accordance with the terms of the lease. The Respondent has accepted the need to have the "Annual Maintenance Provision" (i.e. the interim service charge) and the Maintenance Adjustment (i.e. the adjustment after the annual service charge accounts have been prepared) ascertained and certified by a qualified Accountant. The demands for the service charges in 2020 and 2021 have been re-issued to comply with this requirement.

29. Ms Flannery stated that the Respondent was considering an application to this Tribunal to remove the requirement to employ managing agents pursuant to the provisions of Part 4 of the Landlord and Tenant Act 1987. We suggest that it is unlikely that such an application would succeed against the express wishes of one of the tenants.

The Background

30. Ms Hooley acquired her leasehold interest in 2005. No problems seem to have arisen until October 2017, when Mr Ian Macdonald resigned as a director and sold his lease. He was a property lawyer. Ms Hooley had no complaint as to how he managed the Property, despite the apparent absence of any audited accounts.

31. There was a lacuna for some twelve months whilst the lessees decided how the Property should be managed. On 19 February 2017, Ms Flannery was appointed as a director. On 4 July 2019, Ms Walker was appointed as a second director. Ms Hooley took legal advice at this time. She expressed some interest in becoming a director (see R.306). On 10 July 2019, she suggested that managing agents should be appointed (see R.307-309). This proposal was rejected by the other lessees.

32. On 17 August 2019, Ms Flannery obtained a report from Platinum Roofing and Property Repairs ("Platinum") (at R.105), The report concluded that the flat roof was beyond economic repair and needed to be replaced. On 9 September 2019, the Respondent served a Notice of Intention in respect of the "Renewal of High Level Flat Roof" (at R.106-109). On 6 October (at R.110-111), Ms Hooley responded complaining that a roofer, rather than a surveyor had been used to identify the necessary works. She also questions why the proposed works are not more extensive to address wider maintenance problems. On 13 October (at R.112), Ms Flannery responded. She noted that the roof works were urgent as there had been a number of leaks over the last couple of years.

The directors intended to consider a wider package of works. Ms Flannery expressed regret that Ms Hooley was unwilling to share details of the surveyor's report which she had obtained. On the same day (at R.113-118), Ms Flannery circulated the tender documentation to the lessees. On 3 May 2019, Ms Hooley had obtained her own report on the state of the roof from Carter Fielding (at A.547-570).

33. On 26 February 2020 (at R.119), Ms Flannery reported that the tender had been issued to six builders, but only two quotes were received. Neither could start in 2019. Since scaffolding was required, the Respondent had decided to combine the roofing works with a programme of external repairs and decorations. On the same day (at R.120), Ms Flannery served a Notice of Intention in respect of these additional works.

34. On 19 March 2020, Ms Hooley served a Preliminary Notice under Part 2 of the Landlord and Tenant Act 1987 for the appointment of a manager. On 4 June 2020, she issued her application to this Tribunal (LON/00BD/LAM/2020/0014). On 27 April 2022, this application was heard by a First-tier Tribunal (Judge Pittaway and Duncan Jagger MRICS). They issued their decision on 6 June 2022. Ms Hooley accepted that a number of the works identified in her Preliminary Notice had been carried out. Further works were in hand. Ms Hooley complained that the Respondent had failed to follow the statutory consultation procedures. Whilst she accepted that the accounts had been audited for the years 2020 and 2021, they had not been audited for the years 2005 to 2019. The one complaint that was upheld was the failure of the Respondent to employ managing agents as required by her lease. Apart from this failure, the Tribunal was satisfied that since 2020, the Respondent to comply with its covenants under the lease. The Tribunal concluded that in these circumstances, it would not be just and convenient to appoint a manager. However, the Tribunal invited the Respondent to consider appointing a manager "to act as a buffer between it and the applicant in the day to day running of the Property".

35. Ms Hooley had applied to appoint Mr McCormack as the tribunal appointed manager. McCormack gave evidence and acknowledged the conflict that existed between Ms Hooley and the Respondent. If appointed, he accepted that he might have to make decisions which would upset one of the parties. Because of these apparent conflicts, he was not prepared to accept an appointment on a voluntary basis.

36. Ms Hooley complained about the payability and reasonableness of a number of the service charges that had been demanded. The Tribunal advised her that her remedy might be an application under section 27A of the 1985 Act. This has led to the current application.

37. To avoid any technical arguments about the failure to arrange for the relevant "Annual Maintenance Provision" (interim service charge) and

the "Maintenance Adjustment" (final service charge when the actual expenditure has been computed) to be certified by a qualified accountant, and any failure to serve the requisite Summary of Rights and Obligations, the Respondent has issue fresh service charge demands. These are based on the sums actually expended in the service charge years 2020 and 2021. The Tribunal is satisfied that lawful demands have been made for all the sums in dispute.

38. The Tribunal focuses on the sums actually expended. A number of Ms Hooley's complaints relate to maintenance adjustments relating to the budgeted expenditure. These challenges are now academic.

The Law

39. Section 19 of the 1985 Act gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
>
> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
>
> and the amount payable shall be limited accordingly."

40. The consultation requirements which are required by section 20 of the 1985 Act and which are applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in the leading decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

> Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

41. Section 20ZA of the 1985 Act gives a Tribunal a discretion to dispense with the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to so. In *Daejan*, Lord Neuberger stressed that the only question that the tribunal will normally need to ask is whether the tenant has suffered "real prejudice" (at [50]). The adherence to the statutory requirements is not an end in itself. Neither is dispensation a punitive or exemplary exercise. The requirements are a means to an end; the end to which tribunals are directed is the protection of tenants in relation to unreasonable service charges. The requirements leave untouched the facts that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them (at [46]).

42. In *Phillips v Francis* [2014] EWCA Civ 1395; [2015] 1 WLR 741, the Court of Appeal considered what constitutes a single set of "qualifying works" for the purposes of section 20 of the Act. Lord Dyson, MR, held at [36] that this is a question of fact having regard to the relevant factors including: (i) where the works were carried out (i.e., whether they are contiguous or physically far removed); (ii) whether they were all the subject of one contract; (iii) whether they were done at more or less the same time; and, (iv) their nature and character. Lord Dyson stressed that this is not to be considered to be an exhaustive list.

Issue 1: Insurance

43. Ms Hooley challenges the sums demanded for insurance: (i) £829.30 (2018); (ii) £907.41 (2019); (iii) £935.84 (2020); and (iv) £827.54 (2021). These represent her 20% contribution. She contends that the sums are not payable as no certificate was issued and the demands were not accompanied by the requisite Summary of Rights and Obligations. She also contends that the premiums charged since 2019 have been

excessive. The cover for landlord's contents of £5,000 is excessive. The Respondent replies that these sums have been properly demanded and are reasonable.

44. Ms Hooley argued that it is a condition precedent to her liability to pay the insurance contribution that the cost of the insurance is certified by an accountant. This is not what Clause 3(2) provides (see [25] above). Neither the Lessor nor the Management Company covenant to provide a certificate. The Tenant rather covenants that if a certificate is provided, she will accept it as conclusive of the amount of the insurance. This would oust the jurisdiction of this tribunal to consider the reasonableness of the insurance and would be rendered void by section 27A(6) of the 1985 Act I so far as it seeks to do so (see *Aviva Investors Ground Rent v Williams* [2023] UKSC 6). The Respondent has not sought to raise this argument against the Applicant.

45. The Respondent notes that Ms Hooley has not made any complaint in relation to insurance prior to her current application. The Respondent has provided a detailed response to the Applicant's complaints at R.317-318, including matters relating to the form of demand. The Respondent describe how it has used the services of an experienced professional brokerage firm, Headley Insurance Services, for several years. The Respondent has had to make a significant claim for losses sustained due to an accidental water leak in 2012 which was honoured by (then) insurer Allianz. Since then, financial standing and claims payment history has been an important priority for the company and was a factor in moving policies to AGEAS in 2019.

46. Ms Hooley has produced an email from PolicyFast (at A.207-209), suggesting that comparable lower cost insurance can be arranged. However, she fails to identify an insurer. Ms Hooley complains that the cover of £10,000 for the landlord's contents is excessive. The Respondent stated that this was free cover which was provided as a standard part of the policy. It was not a premium option.

47. The Tribunal is satisfied that the sums have been lawfully demanded. We are further satisfied that the sums demanded have been reasonable.

Issue 2: Service Charges for 2020

48. The Respondent has provided a Summary of the service charge demands for 2020 at R.11. The invoice upon which the Respondent relies, dated 14 February 2021, is at R.27-30. The requisite Summary of Rights and Obligations is at R.31. The summary of the landlord's expenditure, which included insurance, is at R.33. The certified "Maintenance Adjustment" is at R.34. The audited Service Charge Accounts are at R.36-42.

49. The Applicant's total service charge contribution for the year was £8,546.66, including insurance of £935.84. Ms Hooley had paid an interim charge of £3,916 and the insurance charge. The outstanding balance demanded was £3,694.82. On 24 April 2022, Ms Hooley paid £1,346.82.

2.1 Roofing Works: £10,989

50. The Breakdown of his sum of £10,989 is at A.340. The Applicant complains that the Respondent failed to comply with the statutory consultation procedures and the roof replacement was not required. Further, the Respondent did not specifically consult on their proposal to insulate the roof.

51. As discussed at [31] above, on 17 August 2019, the Respondent had obtained a report from Platinum. On 9 September 2019, the Respondent served a Notice of Intention. There was then a delay before the works were executed. On 4 June 2020 (at R.136-137), the Respondent served a Notice of Estimates. Four estimates had been obtained. The Respondent decided to accept the lowest tender from AML Roofing Specialists ("AML") in the sum of £9,510. No VAT was payable. Scaffolding was required, but this was charged separately under the programme of exterior decorating and masonry work.

52. We are satisfied that the Respondent complied with the statutory duty to consult. We are further satisfied that the Respondent was entitled to conclude that the works were required and to include insulation in the schedule of works. There had been a history of leaks. The life expectancy of a mineral felt roof is only some 15 years. We reject the Applicant's suggestion that these works were an improvement.

53. The Applicant challenges two additional items, namely £480 for additional works required by the local authority and £369 for a building control payment to the local authority. Ms Hooley complains that she was unaware of these additional payments. The Tribunal is satisfied that these additional payments are payable. It is inevitable in any such contract that additional sums such as these may become payable.

2.2 Exterior Decorating and Masonry Works: £24,540

54. The Breakdown of this sum of £24,540 is at A.340. The Applicant complains of two items namely (i) £1,320 for new guttering and downpipe and (ii) £1,560 for the installation and decoration of new fascias. Ms Hooley complains that she was not aware that these additional works were to be included.

55. On 26 February 2020, the Respondent served a Notice of Intention (at R.119-121). The proposed works were described as "Redecoration of all

external doors, windows and masonry areas. Where necessary small repairs in preparation for painting with premium external paint, for woodwork/masonry window ledges". On 15 May 2020, the Respondent obtained a report from Fothergill (at R.122-125) who inspected some cracking to the masonry. Mr Fothergill, a structural engineer, concluded that any movement was historic. However, he recommended repairs to the masonry. On 8 June 2020, the Respondent served a Notice of Estimates (at R.138-141). Two estimates had been obtained for the decorating and masonry work (ranging from £14,450 to £15,970, both exclusive of VAT) and three for the scaffolding (ranging from £3,600 to £6,150, all exclusive of VAT). However, Ms Flannery also noted that a more limited package of works had been discussed with the lessees.

56. The Respondent accepted the lowest quote from CJH Brick Restoration for the decorating and masonry works in the Cotterill sum of £14,450 (exc VAT). The works omitted reduced the contract price to £13,550. However, it was subsequently decided to add the two additional items at a cost of £1,100 + £1,300. This took the total contract price to £16,850 which increased to £20,220 inclusive of VAT. In the email of 8 June, Ms Flannery had proposed a contingency of an additional 10%. The need for the additional works only became apparent when the scaffolding was erected. Ms Flannery states that there were weekly meetings with the lessees (via Microsoft Teams) to discuss the extended scope of the works. The Respondent recognise that there may have been a technical breach of the statutory consultation duties. If so, they apply for dispensation.

57. The Applicant complains that the Respondent failed to comply with the statutory consultation procedures. We reject this. The Tribunal is satisfied that the sums demanded are reasonable and payable. We do not accept that there was any technical breach of the consultation requirements. It is not unusual for additional works to become necessary once contractors are on site. The issue is whether the totality of the works constitute a set of "qualifying works" for the purposes of section 20 of the 1985 Act (see [42] above). We are satisfied that they did. There would have been no merit in stopping the works whilst a further round of consultation was conducted. Were we to be wrong on this, we are satisfied that it would be appropriate to grant dispensation. There is no suggestion that any prejudice has been caused to the Applicant.

2.3 Additional Items which are Challenged

58. Fothergill Report: £600. The Fothergill report, dated 15 May 2020, is at R.122-125. The invoice at R.63. The Applicant contends that this report was unnecessary as she had obtained her own report. We disagree. The Respondent were entitled to obtain their own report.

59. Replacement of two waste bins: £98.97. The invoice from Bins Direct.Com, dated 6 September 2020, is at R.70. The Applicant complains that the original demand for this item was defective. The

Respondent concedes this and now relies upon the demand dated 14 February 2021. We are satisfied that this item is payable and reasonable.

60. Painting and Reglazing front door: £957.60. The invoice, dated 27 October 2020 is at R.56. The Applicant contends that the door was beyond economic repair and should have been repaired as part of the major works. We disagree. The Respondent was entitled to execute this work. We are satisfied that this item is payable and reasonable.

61. Fire Risk Assessment: £210. The Applicant contends that this expense was not necessary. We disagree. We are satisfied that this item is payable and reasonable.

62. Bank Charges: £9.40. The Applicant contends that this is not a service charge item. We disagree. A landlord needs a bank account in order to operate a service charge account.

63. Information Commissioner's Fee: £40. The Applicant questions why this fee was payable. The Respondent reply that registration is required under the Data Protection (Charges and Information) Regulations 2018. We agree and are satisfied that this charge is payable.

2.4 Accountancy Issues

64. Ms Hooley raises a number of accountancy issues which have no bearing on the service charges which she has been required to pay. At A.158, she complains about "a discrepancy between bottom up and top down", an adjustment of £1,028. This relates to the sums claimed for the exterior decorating and masonry works. We have discussed the sums charged above. The sum of £24,540 which appears at A.340 is the same figure as appears in the Service Charge accounts at R40.

65. Secondly (at A.151), she challenges the "maintenance adjustment" of £3,694.82 (at R.30). This is the difference between the estimated and the actual expenditure for the years. Thirdly (at A.156), she disputes a "maintenance adjustment" of £4,319 relating to the two sets of major works. We have already discussed the items charged to the service charge account.

2.5 Set-Offs

66. Ms Hooley contends that she is entitled to a set-off in respect of a number of claims.

67. Set-Off in respect of damage to carpet: £300. Ms Hooley states that her carpet was damaged by workmen. On 15 November 2020 (at R.286), the Respondent offered to clean the carpet. Ms Hooley did not take up the

offer. In evidence, she stated that she had not noticed the offer because it was "lost in the rant". In the light of this offer, we reject this claim.

68. Supply of new roof light: £330; Skylight or roof light: £470. Ms Hooley contends that the skylight in her flat was broken by workmen. The Respondent Replies that the contractor was unable to move the skylight and therefore needed to break it to remove it. The Respondent ordered a replacement which was fitted within 48 hours. We accept the Respondent's evidence and reject this claim.

69. Allowance for decorative works: £300; Metal Cover: £450. Ms Hooley contends that her ceiling was extended upwards during the works to the roof, but the metal cover was not reinstated. There was tar staining around the shaft. The Respondent replies that the metal cover was an integral part of the old dome and was not a separate item that could be reinstated. The Respondent gave Ms Hooley the option of deduction 80% of R's quote (£240) or reimbursement of 80% of works completed by A's chosen contractor. £300 was included in the service charge accounts for this item (see A.340). Ms Hooley was liable for 20% of this sum, namely £60. We are satisfied that she is entitled to a credit of £60 in respect of this.

70. Set Off for damage to walls in flat due to water ingress: £1,010: On 28 October 2020, the Respondent agreed to compensate Ms Hooley for this damage on receipt of a contractor's invoice. It seems that Ms Hooley has not yet redecorated her flat. The Tribunal is willing to access the damage to the Applicant's flat in this sum of £1,010. She is entitled to a credit in respect of this. This is a cost that will need to be borne by the Respondent Company.

Issue 3: Service Charges for 2021

71. The Respondent has provided a Summary of the service charge demands for 2021 at R.14. The invoice upon which the Respondent relies, dated 12 April 2022, is at R.43-44. The requisite Summary of Rights and Obligations is at R.45-46. The summary of the landlord's expenditure, which included insurance, is at R.47. The certified "Maintenance Adjustment" is at R.48. The audited Service Charge Accounts are at R.49-56.

72. The Applicant's total service charge contribution for the year was £2,945.71. Ms Hooley has not paid this sum.

3.1 Decorating of Hallway: £1,500

73. The Applicant complains that there were defects in the consultation process. She complains that the Respondent changed the number of coats of paint, the colour and the finish on the banister from stain to

varnish. The Respondent denies any defect in the statutory consultation procedures. It is conceded that the works were delayed. However, the lessees agreed that these should be deferred until the external works had been completed.

74. On 31 May 2020 (at R.126-127), the Respondent served a Notice of Intention in respect of the renovation of the interior communal area of the Building. On 20 October 2021 (at R.211-212), the Respondent served a Notice of Estimates. Two quotes had been obtained. Kings Decorators quoted £1,500; Timothy Sutton Decorating Ltd ("Timothy Sutton") quoted £6,750. The Applicant had suggested that a quote should be sought from Timothy Sutton. The Respondent accepted the lowest estimate.

75. Throughout this period. Ms Flannery kept the lessees informed of the reason for the delays. The communications are summarised in the Table at A.14. Ms Hooley suggested that had the works been executed more promptly, Timothy Sutton would have given a more competitive quote. She described how his father was a famous interior designer. In the interim period, Timothy Sutton had established his own form and become very busy.

76. We are satisfied that the Respondent complied with the statutory consultation duties. Details relating to the number of coats, colour of paint and finish to the bannisters were a matter for the Respondent. The purpose of the statutory consultation procedures is to protect tenants from having to pay unreasonable service charges. We are satisfied that the sum of £1,500 paid for the internal decorations is reasonable and payable.

3.2 Fire Alarm System: £5,894.40

77. The Applicant complains that there were defects in the consultation process. In particular, there was no proper scope for the works. There was no reference in the Notice of Intention to the need to obtain a specialist report. The Respondent denies that there was any defect.

78. On 28 March 2021 (at R.204-5), the Respondent served a Notice of Intention in respect of the installation of an automatic fire detection system with connecting heat detectors and sounders within the flat entrance hallways. On 23 June 2021 (at R.206-207), the Respondent served the Notice of Estimates. Three estimates were obtained. The lowest was provided by Elite Fire Protection Ltd ("Elite Fire") in the sum of £4,987 + VAT. On 12 July (at R.208), Ms Hooley asked to see the estimates. Ms Flannery offered to be available on 16 July. On 4 August (at R.210), Ms Flannery informed the lessees that no responses had been received and that the contract would be awarded to Elite Fire. The works were scheduled for 16-18 August. The invoice, dated 31 August, is at R.96.

79. The Tribunal is satisfied that the Respondent complied with the statutory consultation and that the sum is reasonable and payable.

3.3 Additional Items which are Challenged

80. Electrical condition report: £240. The report is at R.165. The Applicant contends that it was not necessary. The Respondent replies that this was a five yearly check of the electrics. The Tribunal is satisfied that this sum is reasonable and is payable.

81. Fire Risk Assessment: £240. The Respondent contends that this was not reasonable as am assessment has been carried out in 2020. The Respondent replies that a further report was required because of the works which have been executed and a change in the fire regulations. The Tribunal accepts the Respondent's explanation and finds that the sum is reasonable and payable.

82. Bin Shed: £1,144. The Applicant contends that it was not necessary to provide a bin shed. The Respondent replies that in 2107, Ms Hooley had proposed a brick bin shed. The Tribunal is satisfied that this sum is reasonable and is payable.

83. Directors and Officers Insurance: £172. The Applicant argues that this was not a service charge item. It is rather an expense for the Respondent Company. The Tribunal disagrees. Under their leases, all the lessees are members of the Respondent Company. It is in the interests of the service charge payers that adequate insurance should be put in place. This is particularly important where there is discord between lessees. Any lessee would be reluctant to put themselves forward to manage the Building in the absence of insurance.

84. Auditor's remuneration: £1,380. The invoice, dated 27 April 2021, is at R86. The auditors needed to prepare both service charge accounts and company accounts to be filed at Companies House. The Applicant argues that this was not a service charge item. It is rather an expense for the Respondent Company. The Tribunal determines that 75% of this cost related to the service charge accounts and is a service charge item. However, 25%, namely £345, is a charge that should be borne by the Respondent Company.

85. Bank Charges: £11. The Tribunal is satisfied that this is a service charge item for the reasons that we have stated.

86. Information Commissioner's Fee: £40. The Tribunal is satisfied that this is a service charge item for the reasons that we have stated.

87. Subscription to Federation of Private Residents' Association: £137.50. The Applicant argues that this was not a service charge item. The lessees

derived no benefit from this. We agree. This is a proper charge for the Respondent Company. However, it is not one that can be passed on through the service charge accounts. It is a cost in respect of which the Applicant will be liable for 20% as a shareholder in the Company.

3.4 Accountancy Issues

88. Ms Hooley raises further accountancy issues which has no bearing on the service charges which she has been required to pay. She challenges the "maintenance adjustment" of £2,945.71 (at R.48). This is the difference between the estimated and the actual expenditure for the years.

Issue 4. Administration Charge of 210 + VAT

89. On 25 April 2022 (at A.1010), Sussex Legal, Solicitors acting on behalf of the Respondent, sent Ms Hooley a pre-action letter demanding payment of the outstanding service charges in the sum of £7,792.07. The Solicitors also claimed legal fees of £210 + VAT. This demand was for an administration charge. The Applicant contends that it is not payable. The Respondent replies that this was reasonable given the arrears that had arisen.

90. This demand was not accompanied by the requisite Summary of Rights and Obligations as required by paragraph 4, Schedule 11 of the 2002 Act. We are therefore satisfied that it is not currently payable. However, Solicitors may well be able to claim it as part of their legal costs should the Respondent need to issue proceedings in the County Court to recover the outstanding arrears of service charges.

Application under s.20C and refund of fees

91. The Applicant has made an application for a refund of the fees that she had paid in respect of her application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In view of our findings above, we do not make such an order. The Applicant has failed on most of her challenges. She has failed to pursue her application in a proportionate manner.

92. The Applicant has also applied for an order under section 20C of the 1985 Act so that none of the costs occasioned by the Respondent in respect of this application should be charged to the service charge account. The Tribunal is satisfied that it would not be just and equitable for such an order to be made. We are satisfied that Ms Flannery has acted throughout in the best interests of the Respondent Company. Ms Flannery and Ms Walker have been willing to assume the responsibility for managing this troubled Building without remuneration. Any application for an order under paragraph 5A of Schedule 11 to the 2002 Act is not relevant to this case.

Conclusions

93. The Applicant has only succeeded on some minor points which had largely been conceded by the Respondent. The Tribunals is satisfied that all the other service charges which have been demanded have been reasonable and payable. The Applicant's success is limited in so far as the costs will be borne by the Respondent Company in respect of which she has a 20% share and is liable for 20% of its costs.

94. There have been no winners in this application. Ms Hooley, Ms Flannery and Mr Hunnisett have had to sacrifice a large amount of their valuable time in addressing this litigation. Ms Hooley has spent substantial sums on legal expenses. The Respondent Company has incurred significant sums in responding to these claims.

95. It has not been clear what the Applicant has sought to achieve through her application. She has suggested that the legal structures in this case whereby any sums disallowed as a service charge account would be borne by the Respondent Company, would nullify the protection provided by the 1985 Act. The problem in this case is rather that the relationship between the five lessees/shareholders seems to have broken down irretrievably. All the lessees have valuable assets in the leases that they hold. However, any potential purchaser would be deterred by the management problems that have arisen at this trouble Property.

96. It seems that Ms Hooley finds herself as a minority on one. The only criticism that can made of the Respondent is their failure to appoint managing agents as required by the leases. Ms Flannery has indicated that the Respondent are considering an application under Part 4 of the Landlord and Tenant Act 1987 to remove this requirement. We suggest that such an application would have a limited prospect of success. However, Ms Hooley must recognise that the appointment of managing agents would substantially increase the service charges that she would be required to pay. We also suspect that any reputable managing agent would be reluctant to take on responsibility for this Building given the problems that have arisen. Any management fee would reflect these difficulties.

Judge Robert Latham
21 March 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).