FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CH/LSC/2023/0092**
Property	**:**	**17 Goldstone, Pimlico Court, Low Fell, Gateshead NE9 5HW**
Applicant	**:**	**HELEN MCKENNA (HELEN LYON)**
Respondent	**:**	**J H WATSON GROUND RENT INVESTMENTS LTD**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 27A** **Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A** **Landlord and Tenant Act 1985 – s 20C**
Tribunal Members	**:**	**Tribunal Judge A M Davies** **Tribunal Member J Elliott**
Date of Decision	**:**	**15 January 2025**

DECISION

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1. The service charges payable by the Applicant for the service charge year ending 31 May 2018 are as set out in the Respondent's service charge account for that year.

2. No order is made under section 20C of the Landlord and Tenant 1985

REASONS

BACKGROUND

1. Mrs Lyon is a long leaseholder of one of 16 apartments in the property known as Goldstone. Goldstone is one of four similar residential blocks of flats on the Pimlico Court estate in Gateshead. The Respondent is the landlord and J H Watson Property Management Ltd ("Watson") are the managing agents.

2. Clause 3(xvi) of Mrs Lyon's lease requires her to pay one sixteenth of "*the cost of providing the services and maintenance specified in the Fourth Schedule and of any Value Added Tax payable whether by the Landlord or its Surveyors or Chartered Accountant in respect of the provision of such services and maintenance and of the computation and collection of the payment therefor…..as certified by the Surveyor or Chartered Accountant for the time being appointed by the Landlord*." Paragraph (c) of the Fourth Schedule provides that the landlord shall "*at all times throughout the said term…..keep in good and substantial repair order and condition the main walls timbers roof drains and the common passages and staircase of the building*."

THE CONSULTATION PROCEDURE

3. In 2017 the roof of Goldstone needed to be replaced. As the cost to each leaseholder was expected to exceed £250, the Respondent was required by section 20 of the Landlord and Tenant Act 1985 to undertake the consultation procedure set out in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").

4. On 7 June 2017 Watson sent each leaseholder a first letter as required by the Regulations notifying the leaseholders of the proposal to carry out the works and inviting written observations, including the name of any contractor to be approached for an estimate, within 30 days. Mrs Lyon did not make any observations in response to this letter.

5. Regulation 11(5) of Schedule 4 to the Regulations requires the landlord to obtain estimates and to "*supply, free of charge, a statement ("the paragraph (b) statement") setting out – … as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and ….make all of the estimates available for inspection.*"

6. Regulation 11(10) provides

   "*The landlord shall, by notice in writing to each tenant…*
   (a) specify the place and hours at which the estimates may be inspected;
   (b) invite the making, in writing, of observations in relation to those estimates;
   (c) specify
   (i) the address to which such observations may be sent;
   (ii) that they must be delivered with the relevant period; and
   (iii) the date on which the relevant period ends."

   Watson sent each leaseholder a compliant paragraph (b) statement on 25 September 2017. Three estimates had been obtained, from two contractors. The paragraph (b) statement advised the leaseholders that the lowest price – provided by Dufell Roofing – would be accepted.

7. Regulation 12 requires the landlord to have regard to any observations received from leaseholders within the relevant period regarding the paragraph (b) statement. Regulation 13 states that where the landlord enters into a contract for the works to be carried out he shall give written notice to each tenant (1) explaining his reasons for choosing the contractor and (2) summarising and responding to any observations supplied by the leaseholders.

8. On 21 November 2017 Watson wrote to each leaseholder as required by Regulation 13 but incorrectly stated that no written observations had been received in relation to the paragraph (b) statement dated 25 September 2017. This was an error, because Mrs Lyon had written by email to Watson on 29 September 2017 with comments on the estimates that had been received. She asked why only 2 estimates had been obtained; why estimates had been obtained from contractors in Leeds and Darlington when there were a number of closer roofing contractors; why there was such a difference between the prices quoted by the contractors; whether

quotations were being obtained for the cost of managing the project; and for the name of the company which had already re-roofed other buildings at Pimlico Court, and what they had charged. Watson did not reply to this email.

THE APPLICATION

9. Mrs Lyon, having for some years sought satisfactory answers from Watson, applied to the Tribunal on 7 November 2023 for a determination firstly as to whether the Respondent was entitled to charge more than £250 per leaseholder for the cost of the re-roofing work in view of its failure to comply with Regulation 13, and secondly whether the Respondent was entitled to add the costs of project management by Watson to the re-roofing costs. The project management costs amounted to £5,658.30, the roofing costs being £49,170**.** Mrs Lyon also sought an order under section 20C of the Landlord and Tenant Act 1985, prohibiting the Respondent from adding its costs of this application to her service charge account.

10. The application was heard by video link. Mrs Lyon appeared in person and Mr Spencer, a director of Watson, represented the Respondent. In her written representations and at the hearing Mrs Lyon raised the following questions:
    (a) Whether Watson's failure to follow the statutory consultation procedure had the effect of limiting the leaseholders' respective contributions to the roofing works to £250;
    (b) Whether a consultation should have taken place in regard to the project management costs;
    (c) Whether those costs were reasonable, particularly having regard to the separate management fee (£2,485) charged by Watson in the same year;
    (d) What was meant by the credit and debit entries in the 2018 service charge account; and
    (e) Why Watson's project management costs were payable when there was no contract between the leaseholders and the managing agents, and there had been no agreement to make a payment.

THE RESPONSE

11. Mr Spencer replied to these questions as follows:
    (a) The error in Watson's letter of 21 November 2017 was due to the use of an incorrect template by a member of staff. It was unclear to Mr Spencer whether Mrs Lyon's observations on the estimates had been taken into account by

Watson or the Respondent prior to their final decision to appoint Dufell Roofing as the roofing contractors. However Mrs Lyon had not shown that she or any leaseholder had suffered loss or prejudice as a result of this failure to comply with the consultation regulations. *Daejan Investment Limited v Benson et al* [2013] UKSC 14 set out the approach the Tribunal should take, namely to focus on the extent if any, to which leaseholders were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of any failure by the landlord to comply with the Regulations. Mr Spencer said that there was no evidence that leaseholders had been disadvantaged.

(b) Project management costs are professional fees for a service rendered in relation to the roofing work but are not themselves building works to which section 20 of the Act applies. Mr Spencer referred to *Paddington Walk Management Ltd v Peabody Trust* [2010] L&T.R. 6 as authority for such services falling outside the definition of "qualifying works".

(c) The project management fee was calculated on a decreasing percentage fee scale, as is normal practice for the supervision of building works. The fee was charged in accordance with clause 2.1 of Watson's management agreement with the Respondent. The overall cost, Mr Spencer said, was reasonable and included appropriate sums paid to Keith James Building Surveyors who were subcontracted to manage the project. Fees retained by Watson were £540 plus VAT for supplying the section 20 procedure notices to the leaseholders, and £925.25 plus VAT for their in-house project management. The time spent on the project by Keith James fully justified the fee paid to him.

(d) Mr Spencer explained the entries in the service charge account.

(e) Mr Spencer said that the Respondent was entitled to appoint a managing agent to undertake the landlord's obligations set out in the lease. The contract for this appointment was between the Respondent and Watson, and there was no mechanism by which the leaseholders could be included as parties to that contract.

FINDINGS AND CONCLUSION

12. The Tribunal noted that Mrs Lyon had been seeking answers to her questions for a number of years. It is unfortunate that Watson did not respond promptly and in full but instead had continued to pursue Mrs Lyon for payment of the service

charges she was questioning. It seems that it was not until 28 May 2024 that Mr Spencer provided Mrs Lyon (and the Tribunal) with a written explanation of the Respondent's position along the lines of his responses set out at paragraph 11 above.

13. Mrs Lyon has obtained advice from several different organisations, some of which may have caused additional confusion. She has not been able to show that the leaseholders suffered any loss or prejudice as a result of Watson's error in the consultation procedure. In view of the decision in *Daejan v Benson* it follows that that error does not negate the consultation carried out by Watson, and the service charge contribution to the cost of roofing works is not limited to £250 per leaseholder.

14. The project management costs were properly calculated on a sliding percentage scale and were reasonable overall. These costs were charged under the terms of Watson's contract with the Respondent. The leaseholders are not entitled to be joined as parties to that agreement. Project management costs are payable as service charges under the terms of the lease since they are inevitably incurred when carrying out substantial repairs or replacement.

15. A section 20 consultation procedure is required for "works on a building or any other premises" – section 20ZA(2), Landlord and Tenant Act 1985. A consultation is not required for professional services connected with such building work.

16. The entries in the 2018 service charge account (which debited payments to Keith James Building Surveyors and credited those payments from the project management fee charged by Watson) are sufficiently clear and understandable.

17. It follows that the roofing costs and related professional fees are payable by Mrs Lyon and the other leaseholders as indicated in the Respondent's service charge account.

18. The lease does not provide for the recovery, as service charges, of any costs incurred in bringing or defending legal proceedings. However, in response to the

application no order is made in respect of costs under section 20C of the 1985 Act.

19. The parties should note that the Tribunal has not been asked to make, and does not make, any determination in relation to management fees other than the 2018 roofing project costs.