FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BJ/LSC/2020/0274**
Property	**:**	**48 & 50 Compton House, 33 Parkham Street, London SW11 3JL.**
Applicant	**:**	**Ms. I. Karatcheva (48)** **Mrs D Massaro (50)**
Representatives	**:**	**In person.**
Respondent	**:**	**The London Borough of Wandsworth.**
Representative	**:**	**Ashfords LLP** **At the hearing: Mr. Kingston-Splatt of Counsel.**
Type of Application	**:**	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	**:**	**Judge Aileen Hamilton-Farey** **Mr. S. Mason BSc FRICS** **Mr. N. Miller**
Date and venue of Hearing	**:**	**1 April 2021 by Video Conference.**
Date of Decision	**:**	**22 April 2021.**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the service charges set out in detail within the application to the Tribunal for the property are payable as follows, namely, that all service charges as set out and detailed below are reasonable and payable

(2) The tribunal makes an Order under S.20C of the Landlord and Tenant Act 1985 that the landlord may not recover any of the costs of these proceedings as service charges.

(3) The tribunal makes an Order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the respondent not recover administration charges in respect of litigation costs arising in these proceedings.

The applications

1. By an undated application (but received by the tribunal on 24 August 2020) 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 charge payable by the applicants in respect of major works to replace windows and ancillary works to the building, and their liability to pay such service charges. Within the application form they say the amount disputed is £11,211.03, however this was clarified during the hearing. This amount relates to a final demand received by the applicants on 6 May 2019 and represents an increase on the previous demand supplied in 2016 of £9,499.00.

2. In addition to the sum claimed the applicants said the respondent had not complied with the S.20 Consultation process properly but provided no details of where they considered the consultation to have been deficient. The tribunal for the convenience of the parties' comments on the consultation that took place.

3. Directions were issued by the tribunal on 17 November 2020 and amended on 15 February 2021. A bundle of documents was provided to the tribunal that included copies of statements of case/reply and witness statements on which the parties wished to rely.

4. The relevant legal provisions and rules and appeal rights are set out in the Appendix and Annex to this decision.

The Property:

5. The tribunal was told that Compton House was a block of 20 storeys on the Surrey Lane Estate, the freehold of the block is owned by the respondents.

6. Ms. Massaro occupies her tenth floor one-bedroom flat under the terms of a lease dated 20 November 1989 for a term of 125 years at a peppercorn rent. It appears that she took an assignment of the lease which was originally sold under the provisions of the Right to Buy Scheme under the Housing Act 1985.

7. Ms. Karatcheva has her tenth floor flat under the terms of a similar lease dated 8 January 2007, for a term of 125 years at a peppercorn rent, which she does not occupy. It appears that the applicant is the first purchaser under the Right to Buy Scheme.

8. There is no dispute between the parties that the leases require the applicants to pay a service charge, or that the service charge may cover the cost of repairs and maintenance to the structure of the building.

The hearing

9. This has been a remote hearing by video conference at which the applicants appeared in person and the respondents were represented by Mr. Kingston-Splatt of Counsel.

10. The applicants had some connection issues at the start of the hearing with Ms. Massaro being unable to connect to the video system. Ms. Karatcheva was in contact with her by telephone and therefore presented the applicants' case until Ms. Massaro was able to connect. This was finally done when Ms. Massaro joined Ms. Karatcheva in the same room. The tribunal was satisfied that the parties had had an opportunity to present their cases despite the connection difficulties.

11. The applicants did not call their witnesses, but as the tribunal informed them at the end of the hearing, those witness statements were read and have been given appropriate weight and have been referred to in this decision.

12. The respondents called Mr. Naidoo who had direct experience of the contract to replace the windows and Ms. Parette who dealt with the billing of the service charges, both spoke to their witness statements and amplified on them following questioning from the applicants, the tribunal and re-examination by Mr. Kingston-Splatt.

The Applicants' Case:

13. Ms. Massaro says that in 2014 she was informed as part of the consultation process that it would cost £6,672.04 to replace her windows, that by 2016 that cost had increased to £9,499.00 and then again in 2019 to £11,211.03, a final increase of just over £1,712.03. Both of the applicants considered that the costs had increased unreasonably and following questioning by the tribunal they said they should not be liable for the final bill (£1,712.03). It did not appear that they disputed the need for the works only the cost. In addition, both applicants said that they works had been carried out to a poor standard and therefore this reinforced their view that the final invoice was not payable.

14. In particular, Ms. Massaro had sent the tribunal a sound file of wind noise which she said came through her windows. She said that the respondents' contractors had had to return to her flat and re-pack the windows because they had not been fitted correctly.

15. Although she had completed the application form to the tribunal and included the details of the residents' association, at the end of the hearing she said there was not an operative association, but just an informal group. This contradicted the evidence of Mr. Naidoo, whose evidence we prefer on this issue.

16. Ms. Karatcheva said that her kitchen window fell-out and this showed that it had not been properly fitted and demonstrated the sub-standard work.

17. Both applicants referred to the fact that the access equipment, that they referred to as 'scaffolding' remained in place for too long, and that an extra six-month hire had been incurred.

18. Finally, both applicants made comments that they did not receive their final invoice until May 2020 some 2 ½ - 3 years since the works had first been proposed and started.

19. They both said that in their opinion S.20 had not been properly complied with but provided no other evidence in this regard.

Statement by Mr. Richard Fells:

20. Mr. Fells was the previous occupier of Flat 65 at Macey House, a block adjacent to the subject one. He states that there were delays in the fitting of his windows and that he was very much involved in contesting the costs of the replacements and the quality of work, no evidence has been supplied to support this statement. It does not appear from his statement that there were issues of the quality of his windows, and he says that the window in Mr. Karacheva's flat fell out the same day it was fitted. This does not accord with Mr. Karacheva's own statement regarding the window and does not really assist the tribunal.

Statement by Ms I. Brewer.

21. Ms. Brewer is the leaseholder of 67 Whitgift House, again another block and not the subject one. She says that she did not want to have new windows installed because she liked the wooden ones. She says that she has paid a large amount of service charge over the years to the respondent and makes comments on the repairing obligations of the respondent. However, it has not been disputed by the applicants that the responsibility for repair and maintenance lies with the respondents but is paid for by the service charge.

22. Whilst the tribunal acknowledge the contents of her statement, it does not assist in these circumstances.

Ms. I. Hasselbusch Evidence:

23. Ms. Hasselbusch was the tenant of the flat at the time of the kitchen window problem. She says that on the same evening or maybe a day or two after it fell into the flat, and the there was a draught from the living room window.

24. This evidence is helpful in that it confirms both the statement of the applicants and respondents (in that the window fell in) but does not assist in relation to the differences in timings reported by the applicants and respondents.

The Respondent's case:

25. Mr. Kingston-Splatt informed the tribunal that the block/estate had originally been constructed by the Greater London Council in the 1970's. When the properties came into the ownership of the respondent some documents were handed over, but others were not. The drawings that were available had been checked by the respondents prior to the works being considered.

26. He said that, originally the respondents were aware of the presence of asbestos in the panels below the windows but had not known about the 'sandwich' of asbestos insulation material within the thickness of the spandrel panel. Once this was discovered it was necessary for the respondent to involve the Health and Safety Executive and to adopt a new methodology for the works.

27. He said that the respondents had involved the Residents' Association prior to and during the works, and they had been fully consulted on the options available. He said that he believed Ms. Massaro was a member of that Association and had been present during meetings to discuss the windows.

28. He said that following an inspection by their surveyors, it was determined the windows which were wooden framed were at the end of their useful life and required replacement. The options available would have been to replace like-for-like, or to use PVcU.

29. As the discussions with the Residents' Association progressed and the asbestos insulation boards were discovered, the Residents' Association unanimously voted that the asbestos insulation boards and outer asbestos cement panels should be removed even though they were aware additional costs would be incurred.

30. He said that he did not understand Ms. Karacheva's comment regarding the poor installation of her kitchen widow that had been installed in June and fell out in August. He called Mr. Naidoo.

Mr. Naidoo's evidence:

31. Mr. Naidoo confirmed to the tribunal that he is a qualified architect and is employed by the respondents as a Major Works Technical Manager. He spoke to his witness statement.

32. He said that the original windows in the block were timber framed single-glazed centre pivot units and spare parts were no longer available, with many of them defective with damaged handles and hinges. The timber frames had also rotted to the extent that there was a risk that the glazing may have fallen out had the windows been opened, with the result that some of the windows had been screwed shut by the maintenance team.

33. Lawson Queay Chartered Surveyors were appointed to provide a schedule of condition of the windows and produce a feasibility study, and this confirmed that the windows had reached the end of their economic life and required replacing.

34. Historic records were searched but unfortunately there were no legible drawings detailing the construction of the spandrel panels below the windows, but he confirmed that testing for asbestos containing materials was undertaken to all exposed surfaces before the works started.

35. He said that scaffolding was not used on the building because it would not have been as cost effective, but a series of mast wall climbers was used, which were basically attached to the brickwork with cradles which rose up and down similar to a lift.

36. Once the works had started, the high-risk asbestos insulation board was discovered within the spandrel panel construction. He said that this

was an unusual construction, and it was necessary to break-open the first unit when the work started on a pilot flat for this to be discovered.

37. With respect to the mast climber, he said that they took approximately 5 months to erect and 6-8 weeks to take down. It was not practicable to dismantle the climber once the asbestos insulation board had been discovered and in fact the climber was necessary for inspections to take place in relation to the windows but was also used for façade repairs. Although he said the applicants thought that a traditional scaffold could have been used, this was not the case and with Gardiner House where scaffold had been erected this was subsequently struck and a mast climber installed.

38. Mr. Naidoo confirmed that he had day-to-day management of the contract on the part of the respondent, the main contractor was Keepmoat, and an independent contract supervisor was also used. The pilot window replacement works started at 13 Gardiner House where the windows were removed along with the asbestos cement board composite panel and disposed of. It was not known at that time that the concealed asbestos insulation board ("AIB") was present.

39. The AIB was discovered in October 2015 when the contractors noticed boiler flues had penetrated through the asbestos cement panel revealing a 'suspicious looking material' behind. This was found on further testing to be a more dangerous type of asbestos which requires notification to the Health and Safety Executive.

40. Following on from this discovery Keepmoat sought specialist advice from a contractor called 'Shield' who carried out a risk assessment and make proposals for the safe removal of the material.

41. Mr. Naidoo said that he had conversations with Ms. Massaro in her capacity as a member of the Surrey Lane Residents' Association (SLRA) and had complained at that time of residents not being kept up to date with progress. He responded to her that there were issues relating to asbestos, but investigations were continuing.

42. All residents were formally notified of the asbestos issue in November 2015 and in December that year they were informed that the initial plan to remove the asbestos had not been successful and further investigations were being made.

43. Eventually new asbestos removal contractors were appointed, and a plan of work agreed, and works carried out.

44. On 3 August 2016, the respondents' out of hours service received a report of the window falling in in the kitchen of No. 48 and smashed the oven door and damaged the worktop. The window was boarded-up

and subsequently repaired and Ms. Karacheva compensated for the damage. He said on cross examination by Ms. Karacheva that he believed the window fell out due to user error, where the tenant had attempted to open the window without first ensuring that its tilt/turn locks were in place. He supported his view with the photographs in the bundle and said that had the windows actually fallen the glass would have smashed, but it was his belief that the tenant had actually removed the window to the floor when they realised that it was unsafe. The photographs on which he relied showed the window glass to be intact and the unit laid on the kitchen floor.

45. With respect to the packing of the windows in Flat 50, he said that the packing had no relation to the structural fixing of the windows, which were by means of steel bolts, with the packing being used to ensure the squareness of the window.

46. Mr. Naidoo also said that at the end of the defects period, both applicants had been contacted by the contractors (who left cards through the door) requesting an appointment to view the works and carry out any outstanding remedial works. Neither of the applicants replied he said and therefore technically neither of these flats has been handed over to the respondents.

Ms. Parette's Evidence:

47. Ms. Parette took us through the various financial Xcel spreadsheets that she used to apportion costs between blocks. She confirmed that S.20B Notices had been served on the leaseholders at the end of each financial year when the final costs of this project were not known, with the effect that the service charge liability of the applicants remained 'live'.

48. The tribunal was assisted by the spreadsheets and financial information within the bundle.

<u>The Consultation:</u>

49. The applicants say the S.20 consultation procedure undertaken by the respondent was somehow flawed. They did not elaborate on the issues which they said invalidated the process.

50. Copies of the Notices of Intention and Estimates were included within the bundle as were the demands for payment.

51. Section 20 of the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) (England) Regulations 2003 require a landlord planning to undertake major works, where a leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form.

52. The Notices of Intention provided to us were, in our opinion, perfectly valid. They met the requirements of the Regulations. Similarly, the Notice of Estimates was also in our view valid and met the requirements of the Regulations. There was nothing in the bundle to lead us to find any flaws or omissions with the procedure that had been undertaken, and without any evidence from the applicants to show where they considered the flaws to be, we must find the process to have been properly undertaken.

53. The tribunal would like to add that, the fact that the cost of the works increased over the years when the works were being finalised, did not invalidate the S.20 process, and from the documents it appears that the applicants were kept fully informed of the costs and given their statutory rights to comment if they wished to do so. It does not appear that either of the applicants took advantage of this.

Decision and Reasons

54. The tribunal determines that the cost of the works identified by the applicants is reasonable and the standard of work was to a reasonable standard. Whilst there were some issues with the windows themselves, the applicants did not give access to the respondents so that defects could be addressed.

55. The tribunal is not persuaded that the window in Flat 48 was badly fitted, and we are persuaded by Mr. Naidoo's evidence that it was more than likely damaged by user error.

56. We find the S.20 process to have been completed properly and in accordance with the Regulations.

57. The tribunal accepts that litigants in person may find it difficult to present their cases and understand the process of the tribunal. However, if a party makes assertions that service charges are unreasonable or works completed to an unreasonable standard, they must produce evidence to the tribunal.

58. In this case neither of the respondents had obtained alternative quotations, or had their windows inspected by a professional who could have written a report on their condition.

59. On the other hand, Mr. Naidoo in particular gave very coherent and unbiased evidence of the contract of works and the situation as it unfolded, and the tribunal prefers his version of events to that of the applicants.

60. At the end of the hearing Mr. Kingston-Splatt said that his clients would not resist the S.20c or Paragraph 5A application and accordingly the tribunal has made the orders requested by the applicants.

61. It is not clear whether the applicants have fully paid their bills for the service charges in dispute. Have they not done so they should pay the respondent within 28 days, or arrange with the respondents, if they, the respondents are willing to do so?

Name: Judge Aileen Hamilton-Farey **Date:** 22 April 2021.

Appendix of relevant legislation and rules

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" 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.

(2) The relevant costs are 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.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) 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) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

20B Limitation of service charges: time limit on making demands.

(1)If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2)Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20ZA Consultation requirements

(1)Where an application is made to a leasehold valuation 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.

(2)In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
....
(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5)Regulations under subsection (4) may in particular include provision requiring the landlord—

(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b)to obtain estimates for proposed works or agreements,
(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.

Annex - Rights of Appeal

1. 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.

2. 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.

3. 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.

4. 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.