FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CS/LIS/2021/0030**
Property	**:**	**29 Brandhall Court, Wolverhampton Road, Oldbury, B68 8DE**
Applicant	**:**	**Mr Leonard Bailey**
Respondent	**:**	**Brandhall Court Management Company Limited**
Type of Application	**:**	**Application under section 27A of the Landlord and Tenant Act 1985 for determination of liability to pay and reasonableness of service charges**
Tribunal Members	**:**	**Judge M K Gandham** **Judge C Kelly** **Mr N Wint FRICS ACIArb**
Date of Hearing	**:**	**16 February 2022**
Date of Decision	**:**	**13 April 2022**

DECISION

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Introduction

1. On 16 July 2021, the Tribunal received an application from Mr Leonard Bailey ('the Applicant'), under section 27A of the Landlord and Tenant Act 1985 ('the Act'), to determine whether the service charges demanded for the service charge periods 1 April 2016 to 31 March 2021 were payable, and the amounts which were reasonably payable, in respect of the property known as Flat 29 Brandhall Court, Wolverhampton Road, Oldbury, West Midlands, B68 8DE ('the Property'). In addition, the Applicant made applications under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') in respect of costs.

2. The Property is located within the development known as Brandhall Court ('the Development'). Brandhall Court Management Company Limited ('the Respondent') is the freehold owner of Development and the Applicant is the current lessee of the Property under a lease dated 10 June 2016 made between him and the Respondent for a term of 999 years from 1 May 2016 ('the Lease').

3. All of the current lessees of the flats within the Development are equal shareholders of the Respondent company and MetroPM manage the Development on the Respondent's behalf.

4. The Applicant's service charge application related to a number of issues, some of which were outside the jurisdiction of the Tribunal. In addition, one of the items referred to in the Application, an item relating to roofing work, gave rise to common issues with an application already before the Tribunal concerning Flats 8, 10 and 11 Brandhall Court (BIR/00CS/LIS/2021/0020). As such, on 20 July 2021, the Regional Judge, RTJ Jackson, under Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Rules'), directed that the prior case be specified as a 'lead case' and the application was stayed for one month pending the decision in that case.

5. The decision in the lead case was issued on 30 September 2021 and the Applicant, subsequently, applied for a direction under Rule 23(6), that the decision in the lead case should not be binding upon him. In a Directions Order dated 14 October 2021 (issuing further directions in this matter), RTJ Jackson noted that the Applicant stated that he did not question "*the actual cost of the work*" carried out by the roofing company, that he accepted that he could not dispute the lead decision and that he did not consider that the reasonableness of the timing of the roofing work was a major part of his case. Accordingly, RTJ Jackson refused the application for a Rule 23(6) direction and it was confirmed that the lead case was binding on the parties to this application in relation to any common or related issues.

6. The Tribunal received a bundle of documents from the Applicant on 10 November 2021 and a statement of case from the Respondent on 30 November 2021. In his written submissions, the Applicant confirmed that his service charge application related to the following items:

    - the cost of repairs and arrears relating to Flat 40;

- non-compliance with section 20 in relation to the roofing works;
- the installation of an Integrated Reception System ('IRS'); and
- the general method of calculation of the service charge.

7. The Tribunal noted that the applicants in the lead case had decided not to pursue an argument against the Respondent for non-compliance of the section 20 consultation requirements in respect of the roofing works, so no prior decision had been made by the Tribunal in this respect.

8. The Respondent's statement of case, mistakenly, suggested that the lead case had dealt with the lack of consultation over the roofing works and, on 14 January 2022, the Tribunal issued further directions pointing out this error and requesting any submissions from the Respondent in respect of the section 20 consultation. The Tribunal also requested confirmation as to whether the Respondent proposed to make an application for dispensation under section 20ZA of the Act. The Respondent did not make an application for dispensation but the Respondent's submissions in respect of lack of consultation were received on 28 January 2022.

9. The matter was listed for an inspection to take place on 16 February 2022. The Applicant attended the inspection and Mr Paul Walker and Mr David Steele (two of the directors) attended on behalf of the Respondent. The inspection was also attended by Mr Matthew Arnold and Mr Faraz Ahmed from MetroPM.

10. At the inspection, Judge Gandham discovered that Mr Arnold was the son of a former employer, for whom she had worked some 20 years previously. Considering the length of time that had passed, Judge Gandham considered that no conflict of interest arose and all parties, having been advised of the same, agreed and were content to proceed.

11. The inspection was followed by a hybrid oral hearing, with the Tribunal sitting at the tribunal venue and the parties attending remotely via the Video Hearing Service (VHS). Unfortunately, due to technical issues with the VHS, the remote part of the hearing was converted to a hearing via CVP.

12. Following the hearing, the Tribunal (and both parties) received, from MetroPM, invoices relating to the roofing works and copies of the service charge accounts for the years ending 31 March 2016 and 31 March 2017, which were referred to and requested by the Tribunal at the hearing. The Tribunal reconvened on 28 February 2022 to make its determination.

Inspection

13. The Tribunal inspected the Development on the morning of 16 February 2022.

14. The Development is situated on the south west side of Wolverhampton Road in Oldbury in the West Midlands. The Development comprises 40 flats, 40 garages, gardens and grounds (which include parking areas). The flats are divided into three blocks– Stafford House (Flats 1 to 12), Warwick House (Flats

13 to 24) and Worcester House (Flats 25 to 40). The Property is located in Worcester House.

15. Based on the submissions made by the Applicant, the Tribunal inspected parts of the roof of Worcester House (the large patio and the low-level roof above Flat 40) and also observed where the aerials and antenna for the IRS were located on each block. The inspected roofs appeared to be in a good condition and the Development appeared to be well maintained.

The Law

16. Section 18 of the Act (as amended) defines what is meant by the term 'service charge' and defines the expression for 'relevant costs'. It provides:

> ***18 Meaning of "service charge" and "relevant costs"***
>
> *(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.*
> *…*

17. Section 19 of the Act limits the amount of any relevant costs that may be included in a service charge to costs that are reasonably incurred and provides:

> ***19 Limitation of service charges: reasonableness***
>
> *(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 of subsequent charges or otherwise.*

18. Section 20 details the consultation requirements and provides:

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

…

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

…

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

As such, section 20 of the Act limits the amount which tenants can be charged for qualifying works unless certain consultation requirements have been either complied with or dispensed with by the tribunal. The detailed consultation requirements are set out in Schedule 4, Part 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations'). These, amongst other things, require the landlord to serve on tenants a Notice of Intention, provide a facility for inspection of documents and require the landlord to have regard to tenants' observations. Regulation 6 of the Regulations provides as follows:

6. Application of section 20 to qualifying works

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

19. Section 27A details the liability to pay services charges and provides:

Section 27A Liability to pay service charges: jurisdiction

(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 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.

(4) No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.
…

The Lease

20. The lease of the Property was extended in 2016. The Lease confirmed that the flat was demised upon "*the same terms and conditions and subject to the like covenants on the part of the tenant and the landlord respectively and the like conditions in all respects as are contained in the Original Lease so that this present lease shall be construed and take effect as if such covenants and conditions were repeated herein*". The Tribunal had been provided with a copy of the original lease for Flat 29, dated 7 December 1999 made between the Applicant and the Respondent for a term of 99 years from 25 March 1991 ('the Original Lease').

21. Under clause 3 of the Original Lease, the lessee covenanted to observe and perform the obligations set out in the Ninth Schedule. In paragraph 6 of the Ninth Schedule, the lessee covenanted to pay the 'Lessee's Proportion' of the 'Maintenance Expenses', which were detailed in the Sixth Schedule to the Original Lease. These included, at paragraph 16:

> "*The purchase maintenance renewal and insurance of fire-fighting appliances for the Development and the purchase maintenance renewal and insurance of communal television aerials and such other equipment as the Lessor may from time to time consider necessary or desirable for the carrying out of the acts and things mentioned in this Schedule.*"

And at paragraph 18:

> *"The provision maintenance and renewal of any other equipment and the provision of any of the service which in the opinion of the Lessor it is reasonable to provide and which (at the time when the equipment or service is concerned is first provided) the Lessees of at least two thirds of the Flats wish the Lessor to provide.*"

22. The Lessee's Proportion of the Maintenance Expenses were detailed in the Eighth Schedule to the Original Lease as "*one fortieth of the Maintenance Expenses attributable to the matters mentioned in the Sixth Schedule*" and paragraph 3 of the Eighth Schedule detailed the manner in which the service charge was to paid and stated as follows:

> "*The Lessee shall pay to the Lessor the Lessee's Proportion of the Maintenance Expenses in manner following that is to say:*
>
> *3.1 In advance on the first day of each month throughout the said term one twelfth of the Lessee's Proportion of the amount estimated by the Lessor or its managing agents as the Maintenance Expenses for the year ending on the next Thirty-first day of March the first payment to be apportioned (if necessary) from the date hereof.*
>
> *3.2 Within twenty-one days after the service by the Lessor on the Lessee of the copy of the account and certificate referred to in paragraph 2 of this Schedule for the period in question the Lessee shall pay to the Lessor or be entitled to receive from the Lessor the balance by which the Lessee's Proportion respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to paragraph 3.1 of this Schedule during the said period."*

Hearing

23. An oral hearing was held via CVP on 16 February 2022. The Applicant attended and gave evidence on his own behalf and Mr Walker and Mr Steele attended on behalf of the Respondent. Mr Arnold and Mr Ahmed attended as witnesses for both parties.

24. The Respondent had raised two matters relating to the documentation contained within the Applicant's bundle, which the Tribunal dealt with as preliminary issues prior to dealing with the substantive matters in dispute.

25. The first matter related to the inclusion within the Applicant's bundle of a signed "without prejudice" proposal between the Applicant and the Respondent. The proposal purported to settle matters in dispute between the parties, in particular, the discounting of service charges to Flat 40, the purported lack of consultation in relation to the roofing works and the cost of the installation of the IRS. The Respondent referred to the proposal as being a 'gentleman's agreement', the contents of which were not for public release.

26. As the proposal was not a post-dispute arbitration, the Tribunal noted that, by virtue of section 27(6) of the Act, it was void insofar as it purported to determine any question relating to the liability to pay service charge for which an application could be made to the tribunal under section 27 of the Act. As such, the Tribunal found the proposal was void with regard to all of the current issues in dispute.

27. The second matter related to the inclusion within the Applicant's bundle of purported extracts of transcripts of the Respondent's Extraordinary General Meeting which took place on 14 July 2016 ('the EGM') and of the Annual General Meeting which took place on 30 September 2017 ('the AGM'). The Respondent objected to the inclusion of the transcripts on the basis that they were, presumably, transcribed from covert recordings of the meetings, that the Respondent was unsure as to whether the transcripts had been edited and that the transcripts included comments made by other leaseholders who had not necessarily agreed to their use and whose comments could be taken out of context. The Applicant, in response to the first of these objections, provided the Tribunal with an email which appeared to indicate that leaseholders had been given permission to record the AGM.

28. The Tribunal, having considered Rule 18(6) of the Rules, noted that evidence which would not normally be admissible in a civil trial could be admitted in tribunal proceedings. The Tribunal also noted that it did not have access to the actual recordings of the meetings (so the transcripts could not be verified as to their accuracy). As such, although the Tribunal allowed the inclusion of the extracts, it only did so as an aide-mémoire for the benefit of the Applicant.

29. At the hearing, Mr Walker and Mr Steele on behalf the Respondent, confirmed that they would not be pursuing any landlord's costs relating to proceedings and Mr Arnold also confirmed that it was unlikely that MetroPM would be making a charge for their related costs. On the basis of the same, the Applicant withdrew his applications in respect of costs under section 20C of the Act and paragraph 5A of Schedule 11 to the 2002 Act.

30. In relation to the roofing works, although the Applicant had made some reference to the reasonableness of the works in his written submissions, the Tribunal confirmed to the parties that the lead case had, previously, dealt with issues relating to the reasonableness of certain works and that the Tribunal

would only be considering whether the section 20 consultation requirements applied to the works (or to any part of them).

Submissions

Flat 40 – Arrears and the cost of repairs

31. The Applicant stated that a former leaseholder of Flat 40 had been in arrears with her service charge for a number of years. He stated that previous directors of the Respondent company had considered taking legal action against the leaseholder, either via the small claims route or by way of proceedings in the tribunal, however, in 2015, two of the directors entered into private negotiations with the leaseholder to negotiate a settlement directly with her.

32. The Applicant stated that the private negotiations ended with the directors agreeing that the Respondent would bear the cost of internal repairs to her flat, purportedly caused by a leak from the roof, and that her arrears would also be discounted by an amount of £2,196.60, subject to her paying the remainder.

33. The Applicant submitted that, according to the Eighth Schedule to the Original Lease, he was only responsible to pay a fortieth percentage of the maintenance expenses for the Development and, consequently, was not obligated to pay towards another leaseholder's arrears.

34. In addition, the Applicant stated that, although the negotiations with the leaseholder had been discussed at both the EGM and the AGM, this was in vague terms, and bearing the costs of the repairs to the Flat had never been raised. The Applicant stated that, although the Respondent appeared to have admitted liability for the internal damage to the flat, there was no report showing either the extent of the damage or the cause of it. As such, he questioned whether the expenditure, being £725.00, was a justifiable service charge expense.

35. Mr Steele, on behalf of the Respondent, stated that the arrears had related to a long-running dispute between the leaseholder of Flat 40 and the previous directors of the Respondent company in relation to damage caused by a water leak. He stated that, whilst the leak had been repaired, the leaseholder had withheld her service charge as she considered that the Respondent should have been responsible to repair the damage that had been caused to the interior of her flat. Mr Steele stated that the Applicant was fully aware of the background to the matter having, historically, been involved with the dispute.

36. He stated that, although the directors had considered whether to take legal action, the directors had not been confident to take such a matter to court themselves and were wary of instructing professional representation in case they were unable to recover their legal costs.

37. Mr Steele stated that, in an attempt to resolve the matter, he, along with his wife and another director, had attended on the leaseholder to see whether the dispute could be resolved amicably. He stated that it was clear after inspecting

the damage, that it had been caused by a leak from the roof. He stated that it was too late to make an insurance claim and, instead, the directors proposed that if the leaseholder agreed to pay her service charge arrears and recommenced her service charge payments, the Respondent would arrange to repair the damage and also to waive the legal and administration charges that had been added to her account. Mr Steele stated that these equated to approximately 25% of the total arrears.

38. Mr Steele stated that the settlement was put to the leaseholders at the EGM and he confirmed that the minutes of the meeting (which had been included within the Applicant's bundle) detailed that 23 out of the 27 attendees were in favour of the proposal. He confirmed that the repairs were carried out and that the leaseholder recommenced her service charge payments. He stated that arrears, to the sum of £2,196.60, were written off as a bad debt.

39. Mr Ahmed confirmed that a credit of £2,199.00 had been applied to Flat 40's service charge account in January 2017. He stated that £1,449.00 of this sum related to legal fees and that £750.00 related to 'additional levy payments'.

Section 20 Consultation

40. The Applicant stated that Icopal Limited ('Icopal') were instructed by MetroPM, in 2014, to carry out a report on the conditions of the roofs of the buildings in the Development. Following receipt of their report dated 21 January 2014 (a copy of which was provided to the Tribunal), the Applicant stated that a service charge reserve was established to fund the identified works.

41. The Applicant stated that, in July 2015, MetroPM issued a section 20 Notice of Intention in respect of the roof refurbishments proposed for the roofs to flats 5, 6, 7, 8, 27 and 38. The Applicant stated that invitations to tender were sent to established roofing contractors and, as David Stevens Roofing Specialist ('David Stevens') had previously carried out some work to the roof of a 'turret' in the Development, he was also invited to provide a quote.

42. The Applicant stated that the quote provided by David Stevens, following the tender process, was not the cheapest quote, even though he was not VAT registered. Despite this, the Applicant stated that David Stevens was contacted by the directors to requote for the works based on a revised specification. He stated that he made no criticism of the integrity of Mr Stevens or the quality of his work, but queried why no invitation to requote was offered to any other contractor. In addition, the Applicant stated that the work to the roofs were divided into smaller projects, each project costing less than £10,000.00, so as to, in his view, avoid the requirement of any consultation under section 20 of the Act.

43. The Applicant stated that the revised specification, which was not produced through MetroPM, did not appear to contain important health and safety precautions which had been included on the previous specification and that the works did not include the insulation of the roof. As such, he stated that the

resulting works were not to the standard that had been agreed by the leaseholders when the reserve fund had been created.

44. In his written submissions, the Applicant stated that, in total, £44,570.25 was spent on the roofing works, so he believed that they constituted 'qualifying works' subject to consultation requirements. As the consultation requirements were not complied with, he submitted his liability should be limited to £250.00.

45. Mr Walker, on behalf of the Respondent, stated that it was incorrect to suggest that a single reserve fund had been set up for the roofing works, although he accepted that monies had been earmarked from the reserve towards the roofing costs. Mr Walker also confirmed that he was not involved in any change in the specification to the roofing works nor did he have any personal relationship with David Stevens. He stated that David Stevens had been contacted to provide a quote for the roofing works as the directors had been impressed by the work he had carried out on the turret roof and the 10-year warranty he gave for his work.

46. He stated that the roofing works were split up into various smaller projects for convenience although, in hindsight, the directors accepted that they might have "*got it wrong*". He stated that it was not the directors' intention to circumvent the section 20 consultation requirements and that they had already apologised to the leaseholders for any error on their part in this respect.

47. In relation to the timing of the works, Mr Walker stated that the directors were aware that there were a number of issues to the roofs of Stafford House and the Penthouse (which formed part of Worcester House) and that these were their priority, although there was no specific timeline for the works. He stated some minor works were, subsequently, carried out to Warwick House.

48. Mr Ahmed confirmed that the report from Icopal did not include any works to Warwick House and that the works carried out on this roof by David Stevens were minor.

49. In the written submissions, the Respondent stated that, although Icopal had provided a report for the roofing, this was only a suggested specification for waterproofing and it would have been wrong of the directors to accept the document without question. The Respondent also stated that works to the roof and various options for carrying out the works were discussed and considered at length in directors' meetings and by the leaseholders at various AGM meetings and at the EGM.

50. The Respondent submitted that negotiations with potential contractors took place in order to obtain better pricing and rejected the idea that this was anti-competitive or could lead to potential fraud, instead considering it to be good business practice.

51. The Respondent also stated that the roofs were not replaced but recoated with waterproof material and that it was the directors' intention to implement a

long-term plan and preventative maintenance programme, which at some point would include a complete roof replacement.

52. The invoices for the various roofing works, together with the service charge accounts for the years in question, were forwarded to the Tribunal following the hearing.

Installation of the Integrated Reception System

53. The Applicant stated that paragraph 18 of the Sixth Schedule to the Original Lease required "*the Lessees of at least two thirds of the Flats*" to approve the installation of any new equipment or service at the Development. He submitted that the IRS had been installed at the Development without any consultation with the leaseholders, even though the idea to install such a system had been rejected at a previous annual general meeting. As such, he submitted that its installation was in breach of the provisions of the Lease.

54. In addition, the Applicant submitted that many of the leaseholders, including himself, did not require the system and considered that the money should have, instead, been spent on more urgent items of maintenance and repair, such as the repair of the garage doors.

55. Although, at the hearing, the Applicant accepted that the cost of the IRS was reasonable, in his written submissions he queried the lack of transparency regarding the instruction of the contractor and the lack of health and safety precautions when the installation took place.

56. Mr Walker, on behalf of the Respondent, confirmed that there had originally been a television system at the Development, which had been installed by the builders in 1964. He stated that the original system's reception was poor in many of the blocks and that, later, when analogue transmission ceased, the leaseholders had been left with no option but to pay for a cable service to receive transmissions. He stated that, although the provision of a new service had been considered in previous years, the price of such systems had become more competitive and that, in 2016, the directors agreed to revisit the matter.

57. Mr Walker disputed that the system was installed in contravention of the Lease provisions and submitted that it had been the responsibility of the Respondent to upgrade the system rather than decommission it under paragraph 16 of the Sixth Schedule to the Original Lease, which specifically referred to the "*maintenance renewal and insurance of communal television aerials*" as a Maintenance Expense.

58. In relation to the instruction of the contractor, in the written submissions, the Respondent submitted a copy of an email which detailed that a number of contractors had been contacted to obtain quotes and that Wayne Tipper had been one of only two contractors to actually submit a quote. The email confirmed that the original quote from Mr Tipper was for £6,000.00 and the final cost of installation was £6,250.00, although an additional £280.00 was later paid for the relocation of one of the satellites. The Respondent also stated

that, despite the system having been in place for over five years, the only complaint received regarding it was that from the Applicant.

Calculation of the Service Charge

59. The Applicant submitted that the current calculation of the service charge was not made in accordance with the provisions in the Lease. Although the Applicant stated that there was no specific item of expenditure that his query related to, he stated that the current system of calculation allowed service charges to be misspent and had resulted in a backlog of work to the Development.

60. The Applicant stated that the service charge had been set at the level of £125.00 per month since 2013 and had not been increased since then. He stated that this had resulted in inadequate funds for the maintenance of certain items, such as the repair of the garage doors.

61. In his written submissions, the Applicant referred to the specific provisions in the Original Lease regarding the calculation of the service charge. He stated that paragraph 3 of the Eighth Schedule stated that the proportion payable by the lessee was "*one twelfth of the Lessee's Proportion of the amount estimated by the Lessor or its managing agent as the Maintenance Expenses for the year ending on the next Thirty-first day of March…*". As such, the Applicant submitted that the Respondent was responsible to annually assess the works required for each approaching financial year and each leaseholder was then responsible to pay a fortieth share of the same on a monthly basis.

62. Mr Walker, on behalf of the Respondent agreed that the service charge had been set at £125.00 per month for a number of years, including when the Applicant had, himself, been a director of the company. He stated that, after making any payments for expenditure during the service charge year, the remaining sums were added to the reserve fund.

63. Although Mr Walker accepted that this might not fully accord with the provisions in the Lease, he stated that the current directors were drawing up a long-term plan, which would assess future expenditure and charges.

64. In the written submissions, the Respondent stated that the current level of service charge had been sustainable as the directors had identified more competitive contractors than those which had been historically used by the managing agents. The Respondent confirmed that there was currently £54,000.00 held on account, £30,000.00 of which had been set aside for future works to the garages.

The Tribunal's Deliberations and Determinations

65. The Tribunal considered all of the written and oral evidence submitted and briefly summarised above.

66. When making its determination the Tribunal has considered the Applicant's liability to pay the various items in dispute in his capacity as leaseholder of the Property. The Applicant should, however, note that any reduction in his liability to pay a particular expense as part of his service charge in his capacity as leaseholder of the Property would likely result in the Respondent company (in which he is also an equal shareholder) being liable to bear the shortfall.

Flat 40 – Arrears and the cost of repairs

67. Although the Tribunal noted that the Lease did not provide for repairs to the interior of individual flats to be included within the service charge, the Tribunal accepted that if such a repair was required due to the damage having been caused by an area maintainable by the Respondent, the expenditure for the repair could be considered reasonable if it was not covered by the Respondent's insurance. However, in this case, as the Respondent had failed to obtain a buildings or surveyors' report confirming the cause of the damage, the Tribunal found that there was insufficient evidence to establish that the damage was caused by a leak in the roof or any other of the maintained areas.

68. Accordingly, the Tribunal finds that the sum of £725.00 is not a maintenance expense payable under the terms of the Lease and the Applicant, as the leaseholder of Flat 29, is not liable to pay a fortieth share of the same.

69. In relation to the arrears, the Tribunal accepted that the writing off of the arrears as a bad debt was a pragmatic solution to end the long-running dispute with the leaseholder of Flat 40 and that the proposal had been agreed to by the majority of the shareholders of the Respondent company at the AGM. However, the Tribunal was concerned with the recoverability of that debt from the leaseholders via the provisions under the Lease in light of any restrictions in legislation, as opposed to the entitlement of the Respondent, as the freeholder, to require payments from its shareholder members in that capacity.

70. Additionally, notwithstanding that MetroPM stated that £1,449.00 of the debt related to outstanding legal fees, the accounts for the year ending 31 March 2017 detailed the debt of £2,196.60 as an item of 'Expenditure' in the service charge accounts.

71. The Tribunal did not consider that a 'bad debt' could be considered a 'Maintenance Expense' under the provisions in the Lease, nor did the Tribunal consider that it fell within the definition of either a 'service charge' or 'relevant costs' under section 18 of the Act.

72. Accordingly, the Tribunal also finds that the sum of £2,196.60 is not an item of service charge and the Applicant, as the leaseholder of Flat 29, is not liable to pay a fortieth share of the same.

Section 20 Consultation

73. The Tribunal noted that the various discussions regarding what roofing works were required appear to have commenced following the receipt of the Icopal

report (on the condition of the roofs of Worcester House and Stafford House) in January 2014. The Tribunal also noted that, in July 2015, a Notice of Intention was served by Metro PM relating to the roofs above flats 5, 6, 7, 8, 37 and 38.

74. The Respondent did not proceed with the works detailed in the Notice of Intention and, though the Tribunal accepts that the Respondent was not obliged to proceed with either the works as specified in the Icopal report or in the Notice of Intention, it is clear that the Respondent was aware that extensive roofing works were required to both Worcester House and Stafford House and that it was likely that the costs of such works would be substantial.

75. With regard to the commencement of the works, although the directors stated that they decided to divide the works into smaller projects for convenience, the Tribunal noted that there appeared to be no specific timeline for when each smaller set of works was to be carried out and all of the works were contracted to David Stevens over 2016 and 2017, without any further tender processes having been undertaken.

76. In addition, the Spring/Summer 2016 Newsletter (included within the Applicant's bundle) referred to the directors as having begun "*a programme of work on a number of roofs*", with the costs for "*this work … currently running at £32,176.00"* and the directors hoping to see *"the roofs on flats 7, 8, 5, 6, 37, 38, 11, 12, 9 & 10 completed in due course along with some work to the Worcester roof and the walkway roof too*". The Newsletter also referred to other works having included "*repairs to Worcester House roofs including the Turret Building*".

77. The Tribunal were provided with a number of invoices relating to the roofing work and also a copy of the service charge accounts for the years ending March 2016 and 2017. In addition to the works to the roofs of Worcester House and Stafford House, the 2016 accounts detailed works carried out by David Stevens (which appeared to relate to the work on the turret roof) at a cost of £1,360.00. The invoices included an invoice from Sandwell Roofing Ltd (dated 4 January 2016) for works to the "Walkway" at a cost of £3,576.00 and an invoice from David Stevens (dated 3 September 2017) related to works on Warwick House at a cost of £850.00.

78. The Tribunal found that the works relating to the turret roof, the Walkway and to Warwick House were three individual roofing projects, none of which were subject to section 20 consultation. Based on the submissions from the parties, the work to the turret roof had been carried out by David Stevens prior to the Notice of Intention having been issued by MetroPM in July 2015. The work to the Walkway, although referred to in the Newsletter, appeared to have been carried out prior to the major works to the roofs of Worcester House and Stafford House and was not carried out by David Stevens. In addition, the works to Warwick House were not identified in the Icopal report, were not referred to in the Newsletter and both the Respondent and MetroPM confirmed that they were minor works carried out by David Stevens subsequent to the major repairs.

79. In relation to the other works carried out by David Stevens, these all related works carried out to the roofs of Worcester House and Stafford House and the Tribunal found that, based on the evidence before it, these did amount to a single set of works.

80. The cost of the relevant works were as follows:

• Flats 5 and 6	£ 3,250.00
• Flats 7 and 8	£ 2,750.00
• Flats 9 and 10	£ 6,860.00
• Flats 11 and 12	£ 6,750.00
• Flat 31 (Penthouse)	£ 2,350.00
• Flats 37 and 38	£ 6,750.00
• Flat 39	£ 8,750.00
• Flat 40	£ 5,750.00
Total	£43,210.00

81. As the amount of the relevant contribution of the Applicant would otherwise have exceeded £250.00 (£43,210.00/40 = £1,080.25), the works were 'qualifying works' for the purposes of section 20 of the Act and, consequently, were subject to the consultation requirements.

82. Although the Tribunal accepts that the directors of the Respondent company did not set out to circumvent the consultation requirements under section 20 of the Act, rather their actions appeared to have been for convenience and borne out of naiveté as to their obligations as a landlord, the requirements of the regulations are strict and do not allow for any flexibility in their interpretation.

83. Accordingly, as the consultation requirements were not complied with and as the relevant contribution of the Applicant (as a tenant) would otherwise have exceeded the amount of £250.00, the Tribunal finds that the total contribution of the Applicant, as the leaseholder of Flat 29, to the works detailed in paragraph 80 above are limited to £250.00.

Installation of the Integrated Reception System

84. The Tribunal noted both parties' submissions with regard to the terms of paragraphs 16 and 18 of the Sixth Schedule to the Original Lease. The Tribunal considered that the purchase and installation of the IRS equipment fell within the provisions of clause 16 of the Original Lease, as they equated to the modern provision of a 'communal television system'. As such, there was no requirement for two thirds of the leaseholders of the Development to have agreed to the installation.

85. The Applicant did not dispute the reasonableness of the cost of the works and the Tribunal did not consider that the Applicant's submissions amounted to the works having not been carried out to a reasonable standard.

86. Accordingly, the Tribunal finds that the costs of £6,540.00 are reasonable and that the Applicant, as the leaseholder of Flat 29, is liable to pay a fortieth share of the same.

Calculation of the Service Charge

87. The Tribunal accepted that the service charge did not appear to have been calculated in accordance with the provisions of the Lease. Instead, the service charge had been set at a fixed amount for a number of years, including during the time when the Applicant had been a director of the Respondent company. Although the Respondent had managed to accumulate a significant sum towards the future repair of the garage doors, and had drafted a long-term plan, this does not obviate the Respondent from its obligations to comply with the terms of the Lease in this respect.

88. That being said, the Applicant's concerns with regard to the calculation of the service charge appeared to relate to his general discontent at the management of the Development by the current directors and the possible lack of funds for future expenditure. As the directors did not make a charge for their service and the Applicant did not identify any specific future item of service charge in dispute, there is no determination for the Tribunal to make in this regard.

Appeal Provisions

89. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
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Judge M. K. Gandham