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**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **MAN/16UE/LSC/2014/0013** |
| **Properties** | : | **16 St. James' Court, Whitehaven**<br>**1, 2, & 6 Peter Street, Whitehaven**<br>**1 & 11 Windmill Brow, Whitehaven**<br>**3, 5, 6, 21, & 30 George Street, Whitehaven**<br>**51 & 52 Wellington Row, Whitehaven** |
| **Applicants** | : | **Mr R McKee**<br>**Mr T Ofee**<br>**Ms E Clingan**<br>**Mr D Cook**<br>**Mr D O'Neil**<br>**Mr S Kegg**<br>**Mr D Caswell (Lead Applicant)**<br>**Ms C Twinn**<br>**Mr AJ Quinn**<br>**Mr G McGrady**<br>**Mr S Mills** |
| **Respondent** | : | **Home Group Ltd.** |
| **Represented by** | : | **Mr Tyson** |
| **Type of Applications** | : | **Landlord and Tenant Act 1985 – s 27A**<br>**Landlord and Tenant Act 1985 – s 20C** |
| **Tribunal Members** | : | **P Forster**<br>**I R Harris FRICS** |
| **Date of Decision** | : | **23 May 2014** |

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**DECISION**

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## Decision

1. The amounts of the service charges payable in respect of 16 St. James' Court; 1; 2 & 6 Peter Street, Whitehaven; 1 & 11 Windmill Brow, Whitehaven; 3; 5; 6; 21 & 30 George Street, Whitehaven and 51 & 52 Wellington Row, Whitehaven for 2012/13 are as claimed by Home Group Ltd. in the invoices issued to the respective leaseholders.

2. Under s.20C of the Landlord and Tenant Act 1985, the costs incurred by Home Group Ltd. in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by the Applicants in future years.

## Background

3. This is an application under s.27A of the Landlord and Tenant Act 1985 ("the Act") for the Tribunal to determine the amount of service charges payable for 2012/13 in respect of 14 leasehold properties ("the Properties") in Whitehaven. David Duncan Caswell, the leasehold owner of 6 Peter Street, Whitehaven, is the lead Applicant and he represents the leaseholders of the other 13 properties. The freeholds of all 14 properties are owned by Home Group Ltd. a Registered Social Landlord.

4. Directions were given by the Tribunal on 19 February 2014 providing for the parties to produce bundles of documents to include their statements of case and copies of all relevant supporting documents. The parties complied with those directions.

5. The Tribunal inspected the exterior of the Properties on 25 April 2014. The hearing took place the same day in Workington. Mr Caswell represented the Applicants and Mr Tyson appeared on behalf of Home Group.

6. The Properties were all formerly owned by Copeland Borough Council and were transferred to Home Group under a large scale voluntary transfer. The Applicants are former Council tenants who exercised the right to buy their homes or their successors in title. 16 St. James' Court is a terraced house set in a pedestrianized area on the top of a hill overlooking the centre of Whitehaven. The roof has recently been replaced. The other 13 properties are located nearby in blocks of 1960's flats. Those blocks have also been re-roofed. Other blocks of flats in the immediate vicinity and owned by Home Group are awaiting renovation.

7. Notice of intention to carry out work to the roofs was first given in August 2011. Estimates were provided from two contractors. However, following feedback from residents, the work did not go ahead. At a Leaseholders Forum held in September 2011, Home Group agreed to obtain a full independent survey and re-tender for the work. Between January and August 2012, Home Group arranged further meetings but some were cancelled and there were complaints that not all the leaseholders were invited to all the meetings. Those meetings were not part of the formal

consultation process required by legislation. Unfortunately, the attempt to involve and consult with the leaseholders produced a considerable amount of ill feeling and unhappiness.

8. Mr Caswell obtained his own estimate for re-roofing his block of flats in Peter Street from Mark Lister, a roofing contractor. The price per flat was £1,976.00. That compared with the estimates produced by Home Group of £4,399.67 and £4,388.67 per flat.

9. On 11 May 2012, Home Group gave notice of its intention to carry out work to the roofs. It stated that it considered it necessary to do the work as part of a cyclical maintenance programme. Leaseholders were invited to make written observations about the proposed work and to nominate contractors from whom Home Group would try to obtain an estimate for the work. The leaseholders were told to respond by 11 June 2012.

10. Mr Caswell replied by letter dated 8 June 2012 challenging the consultation process. He points out that in order to comply with the deadline of 11 June 2012 he had to drive from his home in Bradford to Home Group's office in Durham. He says that because of the short notice he did not have time to arrange an RICS report on the state of his roof. He refers to the estimate already provided by Mark Lister and provides a schedule comparing Mr Lister's price with those obtained by Home Group.

11. As well as Mark Lister, two other contractors were put forward by the leaseholders, W Younghusband & Son and Reg Taylor. They were invited by Home Group to submit bids for the work. Those contractors were required to satisfy a number of pre-qualifying criteria, demonstrate financial stability and show an ability to manage and deliver what was described as "a multi-discipline project". None of the contractors nominated by the leaseholders submitted a bid for the work.

12. Mr Caswell obtained a report from a building surveyor, Andrew M Green MRICS, from Penrith Farmers' & Kidd, who inspected the block in Peter Street, Whitehaven. He described the overall condition of the roof to be generally serviceable with no evidence of any serious or significant defects apparent. Home Group's surveyors, Billinghurst George and Partners, did not take issue with that description of the roof. In a letter of 17 August 2012, they say that the general condition of the roof is commensurate with its age and state that the tiles were nearing the end of their effective life expectancy. The roof had moss growing on it which was said to have a detrimental effect. Billinghurst George and Partners expressed the opinion that the most feasible method of remedial work, taking into account ongoing cleaning and access costs, would be to replace the roof. In a letter of 4 September 2012, Mr Green describes that proposition as "preventative maintenance". In his view, the roof could remain in a serviceable condition for at least another 10 years.

13. Home Group obtained tenders for the work and after providing details of the estimates to leaseholders and inviting observations, Mayson Brothers was selected

to undertake the work. The roofing work was carried out and invoices issued to the leaseholders to recover their contribution towards the costs.

## Issues

14. The issues that we have to decide are:

    (1) Did Home Group satisfy the statutory consultation process?

    (2) Was it necessary to replace the roofs – was it reasonable to incur the costs of the work?

    (3) Are the costs now claimed from the leaseholders reasonable?

## The Leases

15. The Properties are held under similar but not identical leases. There are four versions of the lease.

16. The three older versions are in the same terms: under clause 6, the communal facilities include the roof; under clause 7(a)(i), the Lessor covenants to maintain repair or renew such of the communal facilities as are in its ownership; under the Fourth Schedule the Lessor is obliged to *keep the structure and exterior of the Block (including the roof...) in good and substantial repair throughout the Term;* under clause 7(b)(i), the Lessee covenants to pay a fair proportion of the costs incurred by the Lessor in providing the communal facilities; the Fourth Schedule

17. The newer version of the lease stipulates: under clause 3, the Lessor covenants to provide and maintain the services which are specified in the Fourth Schedule; the Fourth Schedule provides for *maintaining, repairing, renewing, cleaning...in all ways keeping in good condition the structure and exterior of the Block (which ...includes the roof...)"*; under clause 2.4, the Lessee covenants to pay the service charges as determined in accordance with the lease; the Fifth Schedule includes in the cost of services *the cost of providing and maintaining each of the services specified in the Fourth Schedule.*

## The Law

18. The relevant law is set out in the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002.

19. S.18 of the Act defines "service charges" 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.

(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.

20. S.19 of the 1985 Act deals with limitation of service charges:

(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.

(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.

21. S.27A of the 1985 Act deals with the liability to pay service charges:

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

## Reasons for the Decision

### The Consultation Process

22. In their submission, the Applicants criticize the consultation process undertaken by Home Group. They include in that process the series of meetings arranged between January and August 2012. There appears to have been a breakdown in communication between Home Group and the leaseholders. From the leaseholders perspective they were being asked to pay for work that they did not consider to be necessary and asked to pay more than they considered reasonable. The leaseholders asked questions but did not feel that they were given satisfactory answers. Home Group showed willing to engage with the leaseholders but failed to adequately explain the reasons for undertaking the work and the process of costing the work and appointing a contractor.

23. We have to look at what Home Group did to consult the leaseholders in terms of the statutory requirements of s.20 of the 1985 Act. The roofing work to be undertaken was qualifying works for which public notice was not required. In those circumstances, landlords must consult where the amount payable by any one contributing leaseholder exceeds £250 in any one year. If there is no consultation the landlord will not be able to recover services charges over £250 per leaseholder per year.

24. The consultation process is subject to the Service Charges (Consultation Requirements) (England) Regulations 2003. A landlord serving a notice of intention to carry out work must give leaseholders a minimum of 30 days to respond and nominate contractors. Home Group's notice was dated 11 May 2012 and required a response by 11 June 2012. Mr Caswell told us that he did not receive the letter until 30 May 2012. We did not have evidence about the date when other leaseholders received their letters but Mr Caswell inferred that they had received the notice at the same time as him. We heard from Ms Lyon who posted the letters and she told us that they had been sent out on the 11 June 2012. She described the mailing system and told us how the letters had been generated. Her evidence was credible and we accepted what she said.

25. Under s.7 of the Interpretation Act 1978, where service of a notice is disputed, the date for service is deemed to be 2 clear days after posting. Home Group conceded

that on that basis the letters of 11 June 2012 gave short notice because they were one day short of the 30 day requirement.

26. Home Group considered Mr. Green's report and obtained advice from Billinghurst George and Partners. There was little difference between them about the condition of the Properties. Where they parted company was about how best to deal with the moss on the roofs and the task of preventative maintenance. A landlord is not bound by any observations made by leaseholders but cannot simply ignore them. They must be considered in good faith and given such weight as is thought fit. As long as a landlord comes to a conclusion to which a reasonable landlord could have come, he will have complied with the requirement even though a reasonable landlord might equally have reached a different conclusion. Home Group did not ignore Mr. Green's report and sought the advice of its own surveyors. It was reasonable for Home Group to follow the advice that it was given.

27. The Applicants also complain about the second notice dated 18 September 2012 that informed them that the specification for the work and other relevant documents could be inspected at Home Group's office in Durham. Most of the Applicants are in Whitehaven and they say that Durham is not convenient for them. Paragraph 2 of Schedule 4 to the 2003 Regulations provides that the place where documents can be inspected should be reasonable. In the course of the abortive consultation process in 2011 Home Group informed leaseholders that the estimates it had obtained could be inspected at its office in Whitehaven between specified times or copies could be posted to them on request. The letter of 18 September 2012 is less accommodating. It was submitted that despite the fact that Mr. Caswell lives in Bradford he travelled to Durham to deliver his letter of 8 June 2012. It is suggested that he could have easily gone there again to inspect the paperwork. That misses the point, it was not convenient for him to go to Durham and it would have been onerous for the leaseholders in Whitehaven to go to the North East. We were told that no one asked to inspect the documents but that may well have been because they were located in Durham. In 2012 there was no offer to provide copies of relevant documents. We find that it was not reasonable to offer access to the documents in Durham. Facilities could easily have been made available at Home Group's office in Whitehaven.

28. A representative of the leaseholders, Mr. Mossop, sat on the tender panel and had the opportunity to participate in the process of selecting a contractor.

29. We are not guided by the dictionary definition of "consultation" as argued by the Applicants but we are bound by the statutory requirements of the consultation process prescribed under s.20 of the Act. We find that Home Group failed to comply with the strict requirements of s.20 in respect of the notice period given in its letter of 11 May 2012 and in the arrangements made to give leaseholders access to documents.

30. Home Group has applied for dispensation under s.20ZA of the Act in respect of giving short notice. We will extend that application to cover its failings to provide reasonable access to the documents. Mr Caswell argued that he had been put at a

disadvantage because of the short notice, his response had been rushed and he had been unable to get his own expert report. We find that the delay was marginal. There was little prejudice to the leaseholders who were able to respond by 11 June 2012 and nominate contractors. Mr Caswell produced Mr Green's report and made further comments on the proposed work which were considered by Home Group after the time limit had expired. The extent and costs of the work were not affected by the short notice. Therefore, we allow the application under s.20ZA and grant dispensation in respect of the notice of 11 May 2012.

31. The failure to provide reasonable access to the documents was inconvenient for the leaseholders but it caused them little prejudice. The evidence was that no one requested access or was actually prevented from obtaining information about the proposed works. The extent and costs of the work were not affected. We grant dispensation in respect of breach of the regulations.

**Costs Reasonably Incurred**

32. Home Group was obliged under the leases to repair and maintain the roofs. The older leases which apply to all but 3 of the properties require the Lessor to *keep the structure and exterior of the Block (including the roof...) in good and substantial repair throughout the Term.* The newer leases which apply to 30 George Street; 51 Wellington Street and 11 Windmill Brow, are worded differently and provide for *maintaining, repairing, renewing, cleaning...in all ways keeping in good condition the structure and exterior of the Block.*

33. Mr Green only inspected and reported on Mr Caswell's block in Peter Street. However, it was accepted on behalf of Home Group that the description of that block as being generally serviceable with no evidence of any serious or significant defects could be applied to the other blocks of flats that we are concerned with. Only 3 of the properties were considered by Billinghurst George and Partners to be in a worse condition. 16 St. James Court is described as having extensive areas of moss growth. 51 Wellington Row is described as being in poor overall condition with a breakdown of the surface of the tiles. The Windmill Brow block had some sections of tiling in poor condition with evidence of deterioration of surface tiles.

34. The surveyors apparently differed on what should be done, if anything, to repair and maintain the roofs. Mr Green gave evidence at the hearing and he accepted that the options were (1) to leave the roofs as they were; (2) to clean and repair as necessary or (3) re-roof the blocks. He agreed that each of those would be reasonable options to take. We did not have the opportunity to put that statement to Billinghurst George and Partners but it is unlikely that they would have taken issue with it. It was a statement that Mr Tyson on behalf of Home Group was ready to accept. We expect surveyors to be cautious when expressing a professional opinion. Likewise, Home Group as a Registered Social Landlord has to be careful and that is why it takes professional advice and requires the contractors it employs to meet high qualifying standards.

35. When we carried out the site inspection we noted the condition of the roofs on other blocks of flats. One block in particular drew our attention because of the

heavy growth of moss and the resident sea gulls. The roof of the adjacent block had obviously been cleaned of moss but the roof had not been replaced. We have a summary of Billinghurst George and Partners' survey of Home Group's properties in the area. The Properties we are presently concerned with have been identified to be re-roofed. Other properties in the same street are marked to have the moss removed. At the hearing we asked why some roofs were to be replaced and others cleaned when there was no obvious difference between them in the surveyor's reports. No answer was given to our question.

36. The decision to re-roof the blocks of flats now rather than clean and repair the roofs or leave them as they are is obviously based on the opinion expressed by Billinghurst George and Partners that the most feasible method of remedial work, taking into account ongoing cleaning and access costs, would be to replace the roofs. In other words, incur the costs now and manage the maintenance of the housing stock in a planned way rather than defer the costs of roof replacement and accept spending money on an ongoing basis.

37. For individual leaseholders they would rather defer the costs of a new roof. That would not be without cost to themselves because they would have to meet the ongoing maintenance costs through the service charge. Some but not all of the leases provided for a sinking fund. It is in the nature of leasehold property that leaseholders do not have the same degree of control as they would if they were freeholders and literally owned the roof over their heads. Responsibility for the structure and exterior of the blocks is given to the Lessor under the terms of the lease. The Lessor is obliged to keep the buildings in repair. That encompasses Mr Green's phrase: "preventative maintenance".

38. The work carried out by Home Group is justified by the terms of the leases. It has not gone beyond what it is obliged to do. The decision to re-roof is supported by expert advice. The course of action adopted by Home Group is reasonable. Mr Green accepted that re-roofing was a reasonable option. It would also have been reasonable to have cleaned and repaired the roofs but the decision is Home Group's to make so long as it acts in accordance with the terms of the leases and what it does is reasonable. The decision to re-roof is not one that the leaseholders would have made but it is in accordance with the terms of the leases and is supported by expert advice.

**Reasonable in Amount**

39. The Applicants challenged the tender process. Understandably, they preferred the much lower estimate given by Mark Lister. However, that price was given without sight of the specification for the work and was for only one block of flats. Mark Lister and the other contractors nominated by the leaseholders did not bid for the work.

40. On one view, the tendering process favours contractors who have previously undertaken "a multi-discipline project". The pre-qualifying conditions are onerous but are designed to provide protection. The requirement to have insurance cover in excess of £5 million is likely to rule out many smaller contractors. It was reasonable