FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/23UB/LSC/2019/0074
Property	**:**	42 Cambray Court Rodney Road Cheltenham GL50 1JX
Applicant	**:**	Paresh Parmar
Respondent	**:**	Cromwell Business Centre Management Company Limited
Representative	**:**	J B Leitch Ltd Simon Allison (of counsel)
Type of Application	**:**	Service Charge: section 27A Landlord and Tenant Act 1985 Limitation of landlord's costs: section 20C Landlord and Tenant Act 1985
Tribunal Members		Judge M Davey (Chairman) Judge J Dobson Mr M Ayres FRICS
Date and venue of hearing	**:**	16 March 2020 Jury's Inn Hotel Cheltenham
Date of Decision	**:**	3 April 2020

DECISION

The service charges for the year 2016-17 in respect of external works of decoration and repair are payable as demanded.

The service charges for the years 2016-17 and 2017-2018 in respect of lift works of maintenance and repair are payable in the sums of £22,490.08 (2016-17) and £74,494.67 (2017-18).

The Applications

1. By an Application to the First-tier Tribunal (Property Chamber (Residential Property) dated 1 August 2019, the Applicant, Mr Paresh Parmar, sought a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges for the service charge years 2014/15 to 2018/19 inclusive and the estimated budget for 2019/20 were payable in respect of his Lease of Flat 42 at Cambray Court.

2. The Applicant also seeks an order under section 20C of the 1985 Act that any costs incurred or to be incurred by the Respondent in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Background

3. The Tribunal issued Directions on 22 August 2019. In those Directions the Tribunal noted that there had been previous proceedings before the Tribunal and before the County Court in relation to service charges for the period from 2010/11 to 2016/17. This raised the question of whether the Tribunal had jurisdiction to hear part of the Application by virtue of section 27(4) of the 1985 Act.

4. The Tribunal accordingly held a case management hearing on 23 September 2019 at Gloucester County Court.

5. The Applicant, Mr Parmar, appeared in person. In his written and oral submissions Mr Parmar raised what he termed five issues:

   Issue 1: Additional managing agent fees (2014).
   Issue 2: Damage to flat from leak in flats above – service charge costs and refund of insurance excess (2015).

Issue 3: Electricity credit re water pump in flat (2016, 2017, 2018 and 2019)
Issue 4: Pointing works (2017): Lift Maintenance charge (2018 and 2019)
Issue 5: Administration charges (2017, 2018 and 2019).

6. The Respondent's solicitors made a written submission, dated 18 September 2019, and this was supplemented by an oral submission at the CMH by Mr Simon Allison, a barrister acting for the Respondent.

7. Having had regard to all submissions the Tribunal judge concluded as follows:

8. Issue (1): As explained to the Applicant at the CMH, an earlier Tribunal determined in case CHI/23UB/LIS/2016/0047/48 that the Applicant's contribution to the fees of the managing agent for the years 2010/11 to 2015/16 was limited to £100 per annum because of the Respondent's failure to consult (under section 20 of the Landlord and Tenant Act 1985) in respect of a qualifying long term agreement (QLTA) entered into for that period with the managing agent. In case CHI/23UB/LIS/2017/0036 the Tribunal refused the Respondent's application under section 20ZA of the 1985 Act for dispensation from the need to consult. It follows that Issue 1 has already been decided in favour of the Applicant. In these circumstances therefore the Tribunal exercised its power under Rule 9(3)(c) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 to strike out Issue 1 from the present Application. Mr Parmar's claim under Issue 1 appears to be one of enforcement of the earlier Tribunal determinations, which is not a matter for this Tribunal it having no enforcement powers.

9. Issue (2): Damage to the Applicant's flat caused by a water leak or leaks from the flat(s) above. At the time of the Directions it appeared to the judge that this had been dealt with by an insurance claim and that recovery of any insurance excess would be by way of a claim against the owner(s) of the flat(s) in which the leak(s) occurred. Because this is not a payment by way of service charge the judge concluded that it was outside the Tribunal's jurisdiction (see further below).

10. The Applicant also challenged service charges in so far as they relate to repairs stated to have been carried out by the Respondent to other flats damaged by water leaks in 2015. However in the earlier case CHI/23UB/LIS/2016/0047/48, heard on 5 April 2017, when the service charges payable in 2010-11 to 2016-17 were challenged by the Applicant, he did not challenge the repair charges in respect of the other flats. The Tribunal judge therefore determined that in those circumstances it was an abuse of process for the matter to be raised in this Application and it was accordingly struck out under Rule 9(3)(d) of the Tribunal

Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 (see further below).

11. Issue (3): The judge determined that the matter of whether the Applicant is entitled to a contribution to his electricity charges because of a pump in his flat installed by the Landlord and run off the Applicant's supply is not a service charge matter but one of contract between the Applicant and the Respondent. It is accordingly outside the Tribunal's jurisdiction (see further below).

12. Issue (5): The sums challenged appeared to be administration charges, which are not governed by an application under section 27A of the 1985 Act. Mr Parmar agreed that he would make an Application under paragraph 5(1) of schedule 11 to the Commonhold and Leasehold Reform Act 2002, which the Tribunal would determine along with the present Application. That application was subsequently received and Directions in respect of the same were issued along with the section 27A applications Directions of 18 October 2019. The Application was subsequently withdrawn, the matter having been settled.

13. The judge determined that the hearing would accordingly be concerned only with Issue (4).

The Applicant's case

14. In his written and oral submissions, in respect of the hearing on 16 March 2020 Mr Parmar sought to reopen the first three of his five issues. This is dealt with below.

15. The two substantive issues that were determined by the judge, in the Directions of 18 October 2019, to fall within the jurisdiction of the Tribunal are the service charge demands that relate to works of repair and maintenance and refurbishment of the lifts at Cambray Court and the charges relating to repointing works to the buildings at Cambray Court in 2016.

16. With regard to the lift works, Mr Parmar says that the sums notified in relation to the same in 2017 and 2018 total £98,683.65. However, he says that the sum notified to lessees by the Landlord on 29 March 2017, in relation to a competitive tender process, stated that the actual figure for the lifts was £58,000. Mr Parmar says that not only have the sums doubled but also the Landlord appears to have run a tender process prior to the end of a consultation process that had been begun under section 20 of the 1985 Act. Mr Parmar also queries why what he considered to be extensive costs were being charged when the lifts were insured and regularly maintained. He particularly asked why it was considered necessary to commission a report from Hemsworth Associates

("Hemsworth") when the lift was supposed to be regularly maintained. Mr Parmar further argued that the consultation process was flawed because the response address given in the stage 1 Notice served at the beginning of the process had changed by the end of that notice period. He also questioned why the managing agents, Metro PM ("Metro") charged for supervisory services if Hemsworth actually performed that role.

17. With regard to the external works, Mr Parmar says that the audited accounts for the period up to March 2017 show external pointing works as £97,332.55 but the accounts for 2018 show external works repointing at £101,926.55. He says that he was left unclear as to the sum payable.

18. Mr Parmar says that over the last 10 years substantial costs have been incurred on external works of decoration and repointing. He instances £45,289.96 in 2010 and £55,931.40 in 2011. He says that despite a Tribunal commenting in 2012 that from their inspection the work appeared to have been carried out to a good standard, £36,795.72 was allocated in 2012 to general repairs including substantial external works, whilst in 2017, £14,474.20 was spent and not subject to consultation.

19. Mr Parmar also says that his Lease provides for redecoration every four years and work was not due until 2018. Furthermore, his lease does not mention repointing.

20. Mr Parmar said that a section 20 notice issued on 27 January 2016 was for external decoration, with no mention of repointing. He says that these works were not necessary but were charged at £101,926.55. He says that the consultation was to 29 February 2016, and "That there was no further notice or communication regarding the appointment of a contractor, the quotes obtained and reason for selecting. "

21. Mr Parmar also sought to raise a number of other issues. First, that Metro PM's management charges exceeded the £250 threshold and that there has never been a section 20 notice with regard to their contract. Second, that the Building Insurance charges exceed £250 per flat and that there has not been any consultation regarding the same. Third that insurance details have not been provided by Metro. Fourth, that on 19 July 2017, Metro issued a section 20 notice with regard to works to storm/surface water drains without any accompanying specifications or further information. Mr Parmar objected to the Metro PM fee for those works and says that it exceeded the consultation threshold and therefore consultation should have taken place.

The Respondent's case

The lift works

22. The Respondent says that by clause 5(12) of the Lease it is obliged to maintain and where necessary renew or replace the lifts and ancillary equipment relating thereto. The Lessees are obliged to contribute to those costs by clause 4(2) of the Lease.

23. The Respondent says that, having decided that the lifts at Cambray Court were ageing and in need of investigation, it commissioned a survey and reports from Hemsworth on all four lifts. The survey took place on 8 September 2016. The subsequent reports (the sample copy of which, relating to the lift in Block 2, is undated) recommended that the safety gear be reinstated. Paragraph 6.2 of the report set out Hemsworth's recommendations and budget costs. They listed four options. The budget cost for modernisation was stated to be £38,000 plus VAT and the cost for replacement was £75,000 plus VAT. The prices were exclusive of builders' work and professional fees.

24. Metro instructed Hemsworth to prepare a specification for the work and carry out a tender exercise. Hemsworth did so and reported by producing a tender analysis dated 1 January 2017. Four companies were invited to tender for the modernisation contract. Tenders were received from A W Parry (£52,645.00); Aspect Lifts (£52,445.00); Axis Elevators (£50,794.40) and Triangle Lifts (£50,364.75). All these prices were exclusive of VAT and all included a one year servicing agreement). Hemsworth recommended acceptance of the bid by Axis Elevators because they were prepared to hold maintenance costs throughout the second year, whilst offering the first year after completion at no extra charge.

25. On 9 March 2017 (not 29 March 2017 as alleged by Mr Parmar), the Respondent served stage one section 20 consultation notices (notice of intention) on the leaseholders with regard to replacement of the drive shaft on all four lifts. The notice period expired on 10 April 2017 by which time the Respondent had received the names of two leaseholder nominated companies (Hoistway Ltd. And Abbey Lifts Ltd).

26. On 29 March 2017 Mr Bird wrote to the leaseholders enclosing the service charge information for the new financial year (1 April 2017 to 30 March 2018). In that letter he said, "A further £58,000 had been included to cover the costs of some major repairs required to the lifts in all blocks. This is an actual figure following a 30 day competitive tender process."

27. The Respondent then instructed Hemsworth to carry out a further tender exercise. Hemsworth duly obtained tenders from six companies and produced a tender analysis dated 20 April 2017. Four of the companies approached were those that had submitted tenders under the earlier exercise and the other two were the leaseholder nominated

companies. The tenders submitted by the four original companies were identical to those provided in the first exercise, as were Hemsworth's analyses of the tenders. The tender of Hoistway Ltd was for £58,327.00 and that of Abbey Lifts was for £40,928.00. Hemsworth recommended acceptance of the tender from Axis Elevators, for the reasons given in the first analysis. The total sums involved were an Axis fee of £60,953.28 plus Metro's 10% management fee of £6,095.33, amounting to £67,048.21 (inclusive of VAT).

28. The Respondent served a stage 2 notice and statement of the six estimates received (as to which see above) dated 24 April 2017. The cheapest quote, of £54,024.96 inclusive of VAT was from Abbey Lifts. The second cheapest quote, of £60,953.28 inclusive of VAT, was from Axis Elevators. Leaseholders were invited to make written observations in relation to the statements of estimates by 24 May 2017. No observations were received and a stage 3 notice explaining why the contract was awarded to Axis was given to leaseholders on 26 May 2017. The reason was that Hemsworth had serious reservations as to how the works were to be carried out by Abbey Lifts and they recommended that the quote of Axis Elevators be accepted.

29. The Respondent says that, as shown in the relevant accounts, sums spent on the lifts were £24,188.98 in 2016-17 and £74,494.67 in 2017-18. The Respondent states that the balance of the fees in 2017-2018, that is to say after the modernisation works, was for works relating to other parts of the lifts, fees of Hemsworth Associates and the routine service contract for the lift. The Respondent submits that because no leaseholder was required to pay more than £250 in respect of these other costs (the Applicant's share of which came to £134.78), the Respondent was not required to consult on those works under section 20 of the 1095 Act.

The external works

30. The Respondent says that the Tribunal does not have jurisdiction to consider the external works before the year 2017-18 (i) because the same have been determined by a previous tribunal in its decision of 19 May 2017 (CHI/23UB/LIS/2016/0047) and (ii) that matters pertaining to the period 2010/11 to 2016/17 in the present application have been struck out by the Tribunal.

31. The Respondent further submits that with regard to the repair charges for 2012 and 2017, the Applicant has previously challenged the charges for the 2010/11 to 2016/17 period and has made payment towards the costs of the repairs. Furthermore, he has since made an application to the Tribunal that led to the 2017 determination. In the event that such charges were not subject to challenge the Respondent says that the Applicant had ample opportunity to challenge them and therefore must be taken to have agreed or admitted the same (*Shersby v*

Grenehurst Park Residents Co Ltd [2009] UKUT 241 (LC); *Cain v Islington BC* [2015] UKUT 0542).

32. Further, or alternatively the Respondent says that Issue 4 is limited to the 2017 pointing works as specified in the Directions of 18 October 2019.

33. With regard to section 20 consultation the Respondent made the following submissions. (1) That the duty is limited to where it is proposed to undertake sets or batches of qualifying works which will lead to any one tenant paying over £250. It does not apply where sets of works cumulatively will come to more than £250 (*Francis and another v Phillips and another* [2014] EWCA Civ 1395). The Respondent asserts that the general repairs are several sets of works none of which exceeds the £250 threshold. (2) Each block at Cambray Court was decorated and repaired in turn between May and November 2011. In a tribunal decision dated 25 February 2013 the Tribunal granted dispensation from the need to consult and noted that a long term maintenance plan was required and that further re-pointing would be needed. (3) Initial repointing works were done in 2013 and further re-pointing in 2017. (4) there has not been substantive external paining since 2011 pending repointing works until 2016-17. (5) the Respondent consulted on the external redecoration works in 2016 and accepted the cheapest quote. (6) the cost of the total external works in 2016-17 was £101,926.55 comprising the decorator's fees, Metro's project management fee and further works which constituted separate sets of works (below the consultation threshold).

Other matters

34. The Respondent says that, without prejudice to its general position as to jurisdiction, its position as to other matters raised by the Applicant is as follows. (1) Buildings insurance is not within the consultation regime it being neither qualifying works nor a QLTA. (2) The 2017 Tribunal decision has already dealt with the matter of heating and hot water supply and their costs and in any event that service is not within the scope of the consultation requirements. (3) Management charges under the management contract are not qualifying works and the agreement is not a QLTA. (4) The Applicant is aware of the Landlord's new address and in so far as this was not given at the time the effect is only to suspend the obligation to make payment of service charges and that suspension has now ended.

35. Finally, the Respondent submitted that if the Tribunal were to find failure on the part of the Respondent to consult it would seek dispensation on the basis that it would be reasonable for the Tribunal to so determine, the Applicant not having suffered prejudice.

36. In conclusion the Respondent submits that the works and services have been carried out or provided in accordance with the requirements of the Lease; that the costs have been reasonably incurred and are reasonable in amount and recoverable under the terms of the Lease.

Discussion

37. The rationale of service charge schemes on long leasehold developments, such as that at Cambray Court, is that the Landlord will perform specified services for the benefit of the building or buildings and the estate and the tenants will be obliged to pay for the costs of those services by way of service charges levied on them by the landlord in a accordance with the terms of the lease. Some leases, as in the case of Cambray Court permit the landlord to collect service charges before any expenditure has been incurred with necessary adjustments being made on completion of the works in question. Because the landlord is thus enabled to spend the tenants' money the scheme must be operated in accordance with the terms of the lease and the legal framework that is designed to protect tenants from unreasonable charges.

38. The present Application is made under section 27A(1) of the Landlord and Tenant Act 1985 which provides that "An application may be made to [the 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.

39. Section 19(1) of the 1985 Act provides that "Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

    (a) only to the extent that they are reasonably incurred, and
    (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly".

40. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as "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.

41. Quite apart from these protections, section 20 of the 1985 Act provides that the landlord must consult leaseholders in accordance with that Act and the associated regulations where (1) it is proposed to carry out qualifying works the costs of which would entail any single leaseholder paying more than £250 towards those costs or (2) where it is proposed to enter into a qualifying long term agreement (as defined) which

would result in any one leaseholder paying more than £100. Failure to consult will mean that the contribution of all leaseholders would be limited to the above sums unless the Tribunal grants dispensation on an application for the same to under section 20ZA of the 1985 Act.

42. The Applicant leaseholder, Mr Parmar has been in dispute for some time with the Respondent Landlord, with regard to the service charges payable under the terms of Mr Parmar's Lease of Flat 42 at Cambray Court. During that time there have been a number of applications made to the Tribunal or its predecessor, the leasehold valuation tribunal ("LVT"), both by the Landlord and by Mr Parmar.

43. By clause 4(2)(A) of that Lease the Lessee covenants, *inter alia*, to pay in advance, by equal half-yearly instalments to be paid on the first day of April and the first day of October in each year, a specified percentage of the estimated costs and expenses and outgoings incurred or provided by the Lessors in any year in or for the carrying out of their obligations under clause 5 of the Lease. The amount to be paid is to be determined by the Lessor's surveyor or managing agent. Clause 4(2)(B) makes provision for a balancing exercise to be undertaken after the end of the service charge year. There is a proviso that permits the Lessors to put any unexpended surplus of sums sought on account towards the annual cost in a future accounting period. There is no provision in the Lease for accumulation of a reserve fund (as confirmed in earlier tribunal proceedings). Clause 4(2)(C) provides that the accounting period is 1 April to 31 March each year and the Lessee's proportion of the excess contribution shall be 1.81%.

44. By Clause 5 of the Lease the Respondent covenanted amongst other things to:

(i) to insure Cambray Court (Clause 5(1))
(ii) maintain and keep in good and substantial repair and condition:
  (a) the main structure of the Building, including the exterior walls, and the foundations and the roof, gutters and water pipes (clause 5(2)(i))
  (b) all such gas and water pipes drains and electric cables and wires in under and upon the Building as are enjoyed or used by the Lessee in common with the owners or lessees of the other flats (clause 5(2)(ii))
(iii) In every fourth year paint the whole of the outside wood, iron and other work usually painted with two coats of good quality paint and grain and varnish such parts as have been heretofore usually grained and varnished (clause 5(3)
(iv) Pay and discharge any rates (including water rates) assessed on the Building and curtilage thereof (clause 5(6))
(v) Maintain an adequate supply of hot water to the premises (clause 5(7))
(vi) Maintain and renew when required the central heating apparatus and all ancillary equipment thereto (clause 5(8))

(vii) employ such persons as shall be reasonably necessary for the performance of the landlord's covenants as the landlord shall in its absolute discretion thinks fit (clause 5(9)
(viii) discharge all proper fees charges and expenses payable to or by such managing agents including the cost of computing and collecting the maintenance charges (clause 5(11))
(ix) maintaining wand where necessary renew or replace the lifts and ancillary equipment relating thereto (clause 5(12).

45. On 9 November 2012, the Landlord applied to the LVT, under section 20ZA of the Landlord and Tenant Act 1985, for dispensation from the need to consult (under section 20 of that Act) in respect of the cost of repointing works carried out on all three blocks at Cambray Court in 2011. The costs came to £37,410 including VAT. In a determination dated 25 February 2013, the LVT granted dispensation and expressed its satisfaction that the works had been carried out to a good standard (CHI/43UL/LIS/2012/0073).

46. In 2016, Mr Parmar applied to the Tribunal for a determination as to the payability of his service charges for the years 1997/98 to 2021/22. (CHI/23UB/LIS/2016/0047/48). Following a case management hearing on 1 December 2016, the Tribunal determined that the issues to be decided would be limited to (1) the standard of service from the communal heating system and if the standard was below a reasonable standard whether the Applicant's contribution to the heating costs in the service charge should be reduced and (2) the cost and the standard of services of the managing agent. That is to say whether the managing agent's fees were justified. The period in question was determined to be 2010-11 to 2016-17 inclusive.

47. The Tribunal decided both issues in favour of the Respondent. However, it also determined that the management agreement dated 12 November 2010 was a qualifying long term agreement (QLTA) and as such should have been subject to consultation. The Landlord subsequently made an application (CHI/23UB/LIS/2017/0036) under section 20ZA of the 1985 Act for dispensation from the need to consult, but the Tribunal refused dispensation. The Applicant's contribution to the fees of the managing agent was accordingly limited to £100 per annum for each of the service charge years 2010-11 to 2015-6 inclusive. (Thereafter a new non-QLTA management contract was put into place).

48. As noted above, in his present Application, Mr Parmar sought to reopen the matter of overpayment of management fees (Issue One). He specifically alleges that in 2014 he was charged supervision fees by Metro and that these are accordingly subject to the £100 annual limit. As stated in the Directions, if Mr Parmar is able to establish that he is owed excess contributions to the management fees that were capped as a result of the earlier Tribunal determinations it is open to him to take the appropriate enforcement measures against the Respondent.

However, this Tribunal is not empowered to entertain such proceedings.

49. Mr Parmar also sought to reopen issue two, which relates to a water leak in 2015 from above which caused damage to Mr Parmar's ground floor flat and to the two flats above. It now seems clear that the damage to Mr Parmar's flat and the two flats above was dealt with by an insurance claim. The matter was complicated by the fact that the claim in respect of Flat 42 was dealt with by Mr Parmar directly with the insurers whereas the claim in respect of the other flats was dealt with by a claim pursued by Metro. Mr Parmar says that he was the required to fund a £250 excess that applied under the policy. What is not clear is why the £250 excess sum was deducted solely from Mr Parmar's insurance moneys, if indeed that was the case. This is of understandable concern to Mr Parmar. However, whilst Mr Parmar may have a claim against some other party in respect of the excess that he was obliged to pay, this is not a service matter relating to the payability or reasonableness of a service charge. It is therefore outside the jurisdiction of the Tribunal.

50. Issue three relates to the Landlord's hot water pump under the bath in Mr Parmar's flat. This was a solution that had been adopted some 30 years ago, ten years before Mr Parmar acquired his lease of Flat 42, to deal with poor hot water supply to that flat and some surrounding flats. It appears that a pump was placed in each of the affected flats. Because the pump in Flat 42 is operated from Mr Parmar's domestic electricity supply he and the Landlord have been parties to a contractual arrangement whereby the Landlord pays him an annual lump sum to recompense him for the cost in his electricity bills that related to the pump. Mr Parmar said that in his case these biannual credit payments of £60 had stopped in the last few years. Mr Parmar argues that it is in the Tribunal's power to order reinstatement (with retrospective effect) of these payments. However, the Tribunal remains of the view that this is a contractual matter and is not a matter of payability or reasonableness of the service charge. It is therefore outside the Tribunal's jurisdiction.

51. At the hearing we were told by Mr Bird that it was his understanding that the credit payments would be resumed. Although he did not specify whether this would be with retrospective effect it is difficult to see why this would not be the case. It is of course most unfortunate that it has apparently taken Tribunal proceedings brought by the Applicant for this matter to be resolved by the Respondent at this late stage. An earlier resolution would have gone some way to minimising the stress caused to Mr Parmar by the cessation of the payments.

52. This brings us to the two main matters with regard to this Application. The first is the lift charges. The Tribunal finds the following facts to have been established.

The Lift charges

53. The Respondent's expenditure on the lifts at Cambray Court was stated to be £24,188.98 in 2016-17 and £74,494.67 in 207-18. The invoices supplied in respect of 2016-17 amounted to £22,490.08. However, Mr Bird stated that two invoices missing from the bundle accounted for the difference of £1,698.90. The lift maintenance contract (held by Axis) appears to involve four annual visits at £678.90 per visit. However, that would account for only £2,715.60 of the sum in the accounts. It follows that a substantial sum (over £20,000) was spent in 2016-17 on other repairs to and inspections of the lifts (dealing with faults, replacement of parts, safety inspections etc.) by Axis. Hemsworth also billed £900 for the surveys commissioned by the Respondent in 2016 with a view to the major works of modernisation that took place in the following year.

54. Of the total sum of £74,494.67 stated to have been spent in 2017-18, £60,953.28 is accounted for by Axis' fee for the major works; £6,095.33 being Metro's fee for management of the works and a fee of £1,020.00 for Hemsworth on signing off of the works (21 January 2018). The balance is attributable to a one-year lift management fee (from 1 April 207 to 31 December 2018) to Hemsworth of £1,200 and maintenance/repair charges billed by Axis.

55. It follows that Mr Parmar is mistaken in his belief that the sum of £98,683.65 is attributable to the major works to the lifts. That sum appears to be £67,048.61 as opposed to the budget estimate of £58,000 notified on 29 March 2019.

56. The Respondent said that the purpose of the initial tender process was to establish whether a statutory consultation would be necessary and to provide an estimate for the 2017-18 budget. However, as stated in paragraph 41 of the Respondent's statement of case the need for consultation had been obvious from the receipt of Hemsworth's original reports. It is therefore not clear as to why the Respondent did not go straight to a section 20 consultation rather than instructing Hemsworth to go through the full initial tender process simply to ascertain a budget figure.

57. Furthermore, Mr Bird's letter of 29 March 2017 was hardly calculated to throw light on the process. Indeed it spread confusion. Notwithstanding that a stage 1 notice had been served on leaseholders by the Respondent on 9 March 2019, the letter of 29 March referred to the inclusion of a sum of £58,000 in the budget for 2017-2018 attributable to the cost of some major repairs required to the lifts and then stated that "This is an actual figure following a 30-day competitive tender process." The £58,000 seems to have been derived from the initial tender exercise carried out by Hemsworth. It is also inaccurate to describe that process as a 30-day competitive tender process at a time when the Respondent had served a stage 1 notice on 9 March 2019. It is not surprising that Mr Parmar believed that the budget figure was pre-

empting that process in the absence of any explanation of the existence and content of the earlier tender process.

58. Nevertheless, despite these matters, the Tribunal is satisfied on the evidence that the Respondent carried out a full consultation process under section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 by serving the notices of 9 March 2019, 24 April 2017 and 26 May 2017.

59. However, that still leaves the matter of whether the sums incurred were reasonably incurred and reasonable in amount. The Respondent says that it had become aware in 2016 that the lifts were ageing and that, mindful of its obligations with regard to maintenance and repair of the lifts, it deemed it prudent to commission surveys of all four lifts. It chose Hemsworth, as a respectable firm of lift consultants, to perform this task. The Tribunal does not consider this to have been an unreasonable course of action, although it is surprising that the need for the same had not been flagged up by Axis, the firm that held a contract to maintain the lifts. Hemsworth charged £800 plus £100 disbursements for the inspections and reports and the Tribunal finds this to be a reasonable sum for the work involved.

60. As noted above, Hemsworth were then instructed to carry out what amounted to a full tender exercise but not as part of a section 20-consultation. Mr Bird explained that it was a preliminary process to obtain a figure for budgetary purposes, although it was far from clear why such an exercise was necessary to obtain such a figure. Nevertheless, it meant that when the section 20 process was undertaken, Hemsworth had already done much of the work, which would not need to be duplicated at increased expense.

61. Hemsworth's fees in 2017-2018, as revealed by the invoices supplied by the Respondent, amount to £2,220.00 including VAT. The fees appear to relate to management of the project, including the preparation of a tender specification, carrying out the tender processes and providing a tender analysis. There is no evidence that these fees were not payable or reasonable, save that the Tribunal has not allowed as payable, in the year 2016-17, service charges in relation to the lifts that relate to fees of £1,698.90, which are not supported by invoices contained in the Respondent's case.

62. At the hearing, Judge Dobson raised the matter of Metro's major project management charges, being a flat fee of 10%. Mr Bird said that this was agreed with the Respondent. Although we have no reason to doubt that this was the case we were not shown any written agreement relating to the same. Nevertheless, the Tribunal is aware that it is an industry wide norm for supervising agents to charge a management fee for major works projects based on a percentage of the cost of the works. This is additional to work carried out by other specialist professionals, such as in the present case,

Hemsworth. The sum of 10% is not unusual in projects of this kind the Tribunal has no grounds on which to find that it is unreasonable.

The external works

63. In his application Mr Parmar raised the matter of the external works in relation to the year 2016-17. He said that there are two sets of audited accounts; one showing pointing works at £97,332.55 and the other at £101,926.55. Furthermore, he says that there had not been a section 20- consultation, nor had the works been justified given that a tribunal in 2012 had judged the pointing work to be in good condition.

64. The Respondent states that the accounts annexed to the Applicant's statement of case, from which the sum of £97,332.55 is derived are not the final accounts and were sent in error. The true sum, as shown in the final accounts, was £101,926.55. The Tribunal accepts this figure.

65. Mr Parmar alleges that no valid section 20-consultation took place with regard to these works. He submits that (1) the consultation carried out in 2016 was for external *decorating* and not *repointing* works (emphasis supplied) (2) that redecoration was not due under his lease until 2018 (3) that repointing had been carried out in 2011 and a tribunal had stated that the works were completed to a good standard, raising the issue of whether repointing was necessary in 2017 and if so why it was not covered by earlier guarantees.

66. The Respondent provided a stage 1 section 20-notice dated 27 January 2016 notifying lessees that the Respondent intended to carry out a complete external decoration of the building as required. The Respondent served a stage 2 notice with estimates dated 5 March 2016. (The notice erroneously referred to 6 selected estimates rather then the three notified). The Respondent chose the lowest tender being that of P&S Decorators (Cheltenham) Ltd., in the sum of £78,960.00. The Tribunal accordingly finds that a proper consultation took place with regard to the external decoration works.

67. Mr Bird stated that the breakdown of the total costs of external works in 2016-17 (£101,926.55) was as follows:

Major works:	£86,724.00
(1) decorating works,	£78,840.00
(2) section 20 fee invoiced in 2016-17,	£3,948.00
(3) section 20 fee accrued in 2017/18 accrued in 2017 accounts,	£3,936.00
Other works	£15,202.55
(1) Stonework repairs	£10,344.55
(2) Fire escape painting	£4,200.00
(3) Accrual for fees at 31 March 2017	£658.00

68. The Tribunal agrees with the Respondent that because the stonework costs were below the consultation threshold it was not necessary for the Respondent to consult on those particular works, which were carried out by the cheapest contractor. With regard to the works the Tribunal accepts that the repointing in 2011 was not a comprehensive repointing of the whole of Cambray Court. Mr Bird told the 2012 tribunal that further repointing would be needed in future as part of a long term maintenance plan. We are told, and accept, that the areas of the building façade repointed in 2016 were not the same areas as were repaired in 2011 or 2013. Mr Parmar also queried the need for external decoration in 2016. However, the last external decoration was in 2010 so there was a six-year gap and the painting was overdue.

69. The Tribunal has no evidence that the costs of the redecoration or the re-pointing in 2016 were unreasonably incurred or unreasonable in amount and accordingly finds that those costs were reasonably incurred and reasonable in amount.

70. Notwithstanding the Directions of 18 October 2019, Mr Parmar's statement of case seeks to dispute the need for and cost of general repairs in 2012 (including external works). This was not dealt with in the 2017 tribunal determination, which was confined to heating and hot water costs and management fees.

71. However, quite apart from the fact that this matter goes beyond his Application and the Directions, Mr Parmar has had the opportunity to challenge these costs in the past and the Tribunal considers that it would be an abuse of process to permit him to raise them at this stage.

72. Mr Parmar also raised other matters in his statement of case that go beyond the Application and Directions. However, by way of assistance in clarifying matters, the Tribunal makes the following observations.

    (1) The building insurance contract is not governed by section 20 of the 1985 Act. It is neither qualifying works nor a QLTA. Mr Parmer's other queries with regard to the reasonableness of the insurance premium are outside the scope of this Application.
    (2) The management contract is not a QLTA. It is for less than one year and thus there was no need to consult under section 20 of the 1985 Act.
    (3) The Landlord's change of address on 19 July 2018 without notification at that time does not affect the current payability of service charges (both past and present) because Mr Parmar has since been notified of the new address.
    (4) The heating and hot water costs for 2014, 2015 and 2018. This is not part of the present Application. In any event, the costs for the years 2010-11 to 2016-17 were considered in the 2017 tribunal decision. The supply of heating and hot water is not in itself qualifying works or a QLTA. However, Mr Parmar says that no section 20-consultation took place in 2014 when the boiler

was replaced. The Tribunal does not have evidence with regard to these works or the relevant circumstances, which are not part of the Application and therefore has accordingly not considered this matter on the present occasion

The Section 20C application

73. The Respondent having been almost wholly successful in respect of the section 27A Application, the Tribunal determines that it is just and equitable that the Application for an Order under section 20C of the 1985 Act be dismissed. This is without prejudice to the question of whether the Lease would in any event permit recovery of the costs referred to in section 20C, by way of service charge.

Conclusion

74. (1) The Tribunal determines, in relation to the Application under section 27A(1) of the 1985 Act, that the disputed service charge sums demanded by the Respondent in respect of the work to the lifts and the external works are payable as follows:

(a) 2016-2017 (lifts) - £22,490.08; (external works) - £101,926.55
(b) 2017-2018 (lifts) - £74,494.67.

(2) The Tribunal does not consider it just and equitable to make an order on the Application under section 20C of the 1985 Act.

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Martin Davey
Chairman of the Tribunal

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex: The Law

Section 18(1) of the 1985 Act defines a "service charge" as:

"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."

Section 19(1) of the 1985 Act, provides that:

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(c) only to the extent that they are reasonably incurred, and
(d) 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".

"Relevant costs" are defined for these purposes by **section 18(2)** of the 1985 Act as "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.

Section 20 provides that

(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 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.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations 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.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(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.

The appropriate amount is set at £250. Thus if the landlord fails to comply with the consultation requirements the amount that a tenant is liable to pay is limited to £250 unless on application to the Tribunal under section 20ZA the need to consult is dispensed with.

Section 20ZA (2) defines "qualifying works" as "works to a building or any other premises."

Section 20ZA(1) permits the Tribunal to dispense with all or any of the consultation requirements in relation to any qualifying works where it is satisfied that it is reasonable to dispense with the requirements.

Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations")).

Schedule 2 of the Regulations provides that

“1 (1) The landlord shall give notice in writing of his intention to enter into the agreement

(a) to each tenant; and

(b) where a recognised tenants’ association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b) state the landlord’s reasons for considering it necessary to enter into the agreement;

(c) where are the relevant matters consist of or include qualifying works, state the landlord’s reasons for considering it necessary to carry out those works;

(d) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom you should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;

(e) invite the making, in writing, of observations in relation to the relevant matters; and

(f) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

Inspection of description of relevant matters

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's proposal

4.—(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.

(2) The proposal shall contain a statement—

(a) of the name and address of every party to the proposed agreement (other than the landlord); and

(b) of any connection (apart from the proposed agreement) between the landlord and any other party.

(3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party—

(a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.

(5) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,

the proposal shall contain a statement of the amount of that estimated expenditure.

(6) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and

(b) it is reasonably practicable for the landlord to ascertain

the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates,

the proposal shall contain a statement of that cost or rate.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.

(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—

(a) that the person whose appointment is proposed—

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body trade association, of the name of the body or association.

(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarizing the observations out the landlord's response to them.

Notification of landlord's proposal

5.—(1) The landlord shall give notice in writing of the proposal prepared under paragraph 4—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;

(b) invite the making, in writing, of observations in relation to the proposal; and

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Paragraph 2 shall apply to a proposal made available for inspection under this paragraph as it applies to a description made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposal

6. Where, within the relevant period, observations are made in relation to the landlord's proposal by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

7. Where the landlord receives observations to which (in accordance with paragraph 6) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

8. Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

Section 20C(1) of the Landlord and Tenant Act 1985 provides in so far as relevant 'that a tenant may make an application for an order that all or any of the costs incurred by the landlord in connection with proceedings before a court or tribunal.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

Section 20C(3) provides that "The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."