



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

**Case Reference** : CHI/OOHN/LSC/2021/0002

**Property** : Grosvenor House  
32 Westbury Road  
Bournemouth  
Dorset  
BH5 1HD

**Applicant** : Martin Dearlove-Flat 1  
Andrew and Sheila Gale-Flat 2  
Stephen Collins- Flat 3  
Andrew Vintor-Flat 6  
John Randall- Flat 8  
Richard and Charmaine Garton-Flat 10  
Vadim Korcagins- Flat 5  
Donna Grier- Flat 7  
Stephen Dwyer- Flat 4

**Representative** : Stephen Dwyer

**Respondent** : Ashcorn Estates Ltd

**Representative** : E & J Estates

**Type of Application** : Determination of liability to pay and  
reasonableness of service charges

**Tribunal Member(s)** : Mr I R Perry FRICS

**Date of Hearing** : None. Paper determination

**Date of Determination** : 7<sup>th</sup> June 2021

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DETERMINATION

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## **Background**

1. This is the determination of a claim made by Leaseholders of Grosvenor House, 32 Westbury Road, Bournemouth, Dorset BH5 1HD (“the Property”). The Applicants are all Leaseholders of flats within the Property and the Respondent is the owner of the Freehold.
2. The application, dated 22<sup>nd</sup> December 2020, relates to the reasonableness of some elements of the service charge for the year 2020/2021, whether the costs of dealing with this application can be recovered as part of the service charge and whether an administration charge can be made in respect of litigation costs incurred in dealing with this application.
3. The property contains 10 flats in total. Nine of the Leaseholders are applicants in this case and they are all represented by Mr Stephen Dwyer who is the Leaseholder of flat 4.
4. E and J Estates are the Representative’s for the Respondent, but the management of the block is handled on a daily basis by SPL Property Management Ltd (“SPL”).
5. The list of five items of service charge in dispute are:- Fees and Contingency Fund £20,000; Cleaning £2,000; Buildings Insurance £4,300; Gutter Cleaning £600; Rubbish Clearance £1000 and Maintenance £800.
6. The application asks the Tribunal to decide:-
  - 1) Are the service charges for cleaning, buildings insurance and gutter cleaning reasonable given comparable market quotes?
  - 2) Is the 10% fee of £6667.30 charged by SPL for roof works reasonable?
  - 3) Is the 7% fee of £5,600 charged by the surveyor for roof works reasonable?
  - 4) Is the contingency fund charged by the surveyor reasonable?
  - 5) Is it reasonable for SPL to charge £60 for payment plans given this is not provided for within the lease?
7. Directions were issued by the Tribunal on 28<sup>th</sup> January 2021. The Tribunal stated that it considered that this application was likely suitable for determination on the papers alone without an oral hearing and would be so determined in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal by 18<sup>th</sup> February 2021.
8. No such objection having been received a Tribunal was arranged for Monday 7<sup>th</sup> June 2021.

## Submissions

9. The Applicant's representative submitted a 'Statement of Truth' which set out the background to the application and states the reasons why the Applicants were challenging the reasonableness of the service charge which SPL had demanded on behalf of the Freeholder, Ashcorn Estates. In addition, Mr Dwyer referred to a number of authorities within his statement.
10. The Tribunal was informed that in 2019 SPL had engaged Greenward Associates to conduct a condition report of the Property. It is unclear from the papers as to when SPL took on the management role for the building, but it seems that this was shortly before the survey report was commissioned. The report was needed partly in response to a history of leaks through the roof.
11. Greenward Associates is a firm of Chartered Surveyors and Designers. The report recommended that a new roof was required for the building which would include some thermal upgrading, decoration of the high-level painted surfaces whilst scaffold was in place and other reasonably associated works. The roof is a combination of flat and pitched construction.
12. On 25<sup>th</sup> July 2019 SPL issued a s.20 Notice of Consultation in respect of the roof replacement. A meeting was held with some of the Leaseholders with the Surveyor in attendance when a tendering process was agreed. SPL informed the Leaseholders that they had taken on the management with minimal funds in reserve and that they were working towards a 5-year maintenance plan for the property. The estimated project cost at this time was "circa £50,000 to £60,000" and they expected to collect funds in the up-and-coming September 2019 budget for the maintenance fund.
13. A tender process followed, and the Leaseholders were informed of the three most competitive prices ranging from £61,667.30 including VAT to £130,597.08 including VAT. The Leaseholders expected this to be the total cost of the works.
14. The submission does not state whether any works were carried out in 2019 but the Tribunal is informed that in September 2020 SPL issued a budget for the year 2020/2021 which indicated the total cost of the roofing works would likely be in the region of £80,000.
15. In September 2020, the Leaseholders received a demand for the following 12 months service charge for £20,000 to contribute towards 'roof replacement'. This later became £22,000 which included a £2,000 contribution towards a reserve fund.
16. Following various communications, it was explained that this £22,000 included a management charge by SPL of 10% of the cost of the reroofing works and fees of 7% to Greenward Associates for technical oversight of the re-roofing contract.

17. The Applicants decided that these costs should be challenged and raised additional questions about other items within the service charge that they thought had risen 'excessively and unreasonably'. Not content with the responses from SPL the Leaseholders made this application to the First-Tier Property Tribunal. The Applicants also submitted an Impact Statement as to the effects of the costs of the maintenance fund, 'especially in light of the Coronavirus pandemic'.
18. The Respondent also submitted a statement of case together with a witness statement from Emily Shepcar FIRPm AssocRICS, Head of Property Management at SPL.
19. The Tribunal was also provided with additional documents including copies of emails and various quotations for the costs within the service charge.

### **The Lease**

20. As an example the Applicants provided the Tribunal with a copy of the lease for flat 4 for which Mr Dwyer is the Leaseholder.
21. Within the lease "the Maintenance Charge" means the yearly sum payable under the Sixth Schedule.

### **The Maintenance Charge**

1. The Maintenance Charge payable by the Lessee shall be a yearly sum in respect of each year ending on 29<sup>th</sup> September equal to ten per cent of the total of the following:-
  - (a) The cost to the Lessor of complying with the covenants on the part of the Lessor in paragraphs 2,3,4,5,9 and 10 of the Fourth Schedule including the employment of contractors in connection therewith
  - (b) The fees and disbursements paid to Managing Agents (if any) for the management of the estate and the provisions of services therein
  - (c) The costs (including the costs of the Lessor's auditor) of ascertaining the Maintenance Charge and the keeping of any necessary books of account
  - (d) A contribution fixed annually by the Lessor to provide a reserve fund to cover accruing and anticipated expenditure in respect of the compliance of the covenants on part of the Lessor
  - (e) The hire charge or other expense paid by the Lessor in respect of any communal refuse bins provided for the storage of household refuse of the Lessee owners and occupiers of the flats in the Property and the repair and renewal thereof
  - (f) All other expenses (if any) incurred by the Lessor in and about the maintenance and proper convenient management and running of the Estate

(g) Any Value Added or other tax payable in respect of any costs expenses outgoings or matters falling within any paragraph of this Schedule

22. The Lease goes on to specify how the Maintenance Charge is to be paid in two equal instalments, how any outstanding sums should be paid and conditions for the Freeholder holding any reserve fund. The Management Charge is in effect an estimate of the costs to be incurred in the repair and upkeep of the Property in the coming 12-month period.

### **Consideration and Decisions**

23. The first matter that the Tribunal needed to do was to consider whether it was fair and reasonable for this matter to be dealt with by reference to the papers and without an oral hearing. Having considered the documents provided and the matters in dispute the Tribunal decided that it could reasonably and fairly proceed to a decision on the papers which had been submitted.

24. Below is a summary of the main points made by the parties together with the Tribunals decision in each matter.

1) a) The Applicants say that the cleaning charge of £2,000 for 2020/2021 is excessive on the basis that it was £800 for the year 2018/2019, later increased to £1,000 per annum, that SPL are using their own cleaning company and they should ensure price competitiveness and reasonableness for Leaseholders. They include an estimate from The Cleaning Services Group Ltd for one clean every two weeks for £39 plus VAT, that is £1,217 per annum, a second quote from Rasco which does not specify at what intervals cleaning is to be done, a quote from Bournemouth Cleaning Services for two, two-hour visits per month at a cost of £840 per annum and two quotes for cleaning carpets in the communal areas for £150 (spot cleaning) or £290 (complete cleaning).

The Respondent points out that the cost within the charge is only an estimate and is based upon charges made by third party contractors for other properties that they manage in the general area.

The Tribunal considers that in the absence of any formal quotes the charge for the previous year should provide a reasonable guide for the likely costs in the year to come and decides that the estimated amount for cleaning common parts within the annual charge should be reduced from £2,000 to £1,500. The Applicants will understand that the actual costs of cleaning will be shown in the accounts for the year 2020/2021 when they have been prepared.

- b) The original provision for Buildings Insurance was £4,300 but this has now been reduced to £2,385 which is accepted by the Applicants.
- c) The sum of £660 was included as a provision for gutter cleaning which the Applicants say is nearly three times as much as they have paid in previous years. They include a quote from Rasco in the sum of £200. The Respondent compares this cost with other properties managed in the area and says that this is not an unreasonable sum to ensure gutters are cleared, and flat roofs are kept clear of debris. The Tribunal is cognisant that this is a three-storey building with large areas of flat roof which do need to be maintained free of debris, as well as gutters themselves being cleared.

The Respondent argues that the amount estimated is not unreasonable for the works to be carried out by an insured company with correct equipment.

The Tribunal considers that in the absence of any formal quotes the charge made in the previous year should be a guide. Having due regard to the quote supplied by the Applicant's the Tribunal decides that the provision for clearing the gutters in 2020/2021 should be reduced to £300. The parties will understand that the actual cost will appear in the accounts for the year 2020/2021,

- d) The sum of £1000 budgeted for rubbish clearance, equating to £100 per flat, is a provision for the year ahead which SPL consider to be prudent. The Leaseholders, based on their experience at the property, consider £1000 to be too high.

The Respondent states that there is often fly-tipping at the property and that the budget of £1000 is reasonable based on experience from previous years.

The Applicants refer to only minor issues of fly-tipping in the past and have not been able to view any receipts for previous cases of rubbish clearing. They also state that some of the items left in the Hallway were owned by one or more of the Leaseholders. Taking the comments from the Applicants who have a longer history at the property than the Agents and the absence of any copy invoices or receipts from the Agents the Tribunal decides that this should be reduced to £500 for the year 2020/2021. The actual cost will appear in the accounts for the year 2020/2021.

- e) The Leaseholders state that SPL are using their own company for ground maintenance, but the Tribunal has not been provided with invoices to confirm this or what maintenance this includes. The Applicants state that this is for one visit per month which would equate to £83.33 per visit. The Applicants provide

estimates from CSG which would include litter picking with internal cleaning, and TGT who would charge £40 per month. The actual cost of maintenance will of course be subject to open record when the year-end accounts are prepared, which is only a few short months away. In the meantime, the Tribunal decides that the amount for maintenance estimated for the current year be reduced to £500.

- 2) The Applicants ask the Tribunal to decide whether SPL should be able to charge a fee of 10 per cent of the net cost of the proposed roofing works and they maintain that oversight of such works should be part of their normal management responsibilities. The Respondent maintains that such a charge is comparable with other national and local firms and is in line with the Royal Institution of Chartered Surveyors 3<sup>rd</sup> Edition Residential Management Code which provides for such a charge to be made.

The Applicants refer to the case *Seamoat LTD v Steven Alan Clark and Talmor Property Developments* where “it was held unreasonable to charge a fee for sending out letters to ten flats as part of the s.20 notification.” It would seem that this charge had been made in addition to an annual fixed fee for the management of the flats concerned.

Emily Shepcar refers to the RICS Service Charge Residential Management Code which states that “your charges should be appropriate to the task involved and pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income”.

The Tribunal has not been provided with the terms of engagement for SPL although it is standard practice for a managing agent to make a charge when overseeing substantial works which necessitate a s.20 process and a fee of 10 per cent is not unusual for overseeing such works which will include the appointment and liaison with surveyors. The Applicants have not challenged the appointment of SPL or their contracted terms.

Based on the information and evidence provided in this case, including the evidence from Emily Shepcar, the Tribunal determines that this charge is reasonable.

- 3) The Applicants ask the Tribunal to decide whether the fee to be charged by Greenwards, Chartered Surveyors is reasonable in the circumstances. A copy of their original tender document and recommendations for roof works dated 24<sup>th</sup> October 2019 sets out the proposed works in detail and demonstrates the level of expertise that they bring to this matter, which would include urgent and necessary decisions needed should any unforeseen difficulties arise

as the works progress, particularly once the roof covering has been removed.

The Applicant's provide a quote from MC Plan and Site Services, a Building Control Consultancy, in the sum of £474 including VAT which would include three site visits in order to monitor the works.

The Respondent argues that other surveyors in the area charge between 12.5-15 per cent and refers the Tribunal to Greenward's Contract Admin Letter arguing that the service offered by MC Plan is not comparable.

The Tribunal has considered the level of complexity and risk involved in overseeing works of this nature and considers that it is in the best interest of all parties for the works to be overseen by a firm of Chartered Surveyors, especially in such a case where they have carried out the initial inspection, produced the tender documents and analysed the tenders.

From its own experience the Tribunal finds that the fee of 7 per cent of the cost of works is entirely normal and is therefore found to be reasonable in this case.

- 4) The Applicants argue that, based on the roof works being carried out at a fixed price by a reputable local company who guarantee the works, there is no need for a contingency fund. SPL argue that a contingency fund is normal in a project of this size, that it is prudent to hold funds against the possibility of additional work being necessary and point out that if not spent then the sum remains in the Maintenance Fund account. The Tribunal agrees that a contingency fund is an entirely sensible precaution and confirms that this sum is payable.

SPL state that the £2,000 contribution to a reserve fund is not an actual cost but an estimate for the year ahead. It is in the Leaseholder's interests to build up some level of contingency and the Leaseholders themselves have made the point elsewhere that there should be a reserve fund. The Tribunal finds that a contribution of £200 per flat per annum is not excessive and should therefore be paid.

- 5) The final question posed by the Applicant's is whether a charge of £60 can reasonably be charged by SPL for managing payment plans when collecting the Maintenance Charge.

The Lease requires the Leaseholders to pay the charge by two payments in September and March of each year. Clearly if a payment plan is provided there will be costs for banking fees and additional clerical fees for collecting money and book-keeping costs. The Tribunal finds that this is a service being provided to the



Leaseholders outside of the normal management duties and that an annual charge of £60 per flat is reasonable.

### **Costs**

25. Within their application the Leaseholders ask the Tribunal to exercise its powers under section 20C of the Landlord and Tenant Act 1985 to make an order that the costs of this Tribunal may not be included within the amount of service charge payable by the Leaseholder.
26. They argue that there had been a lack of transparency in the disclosure of the additional fees and that if there had been longer notice of the extra costs within the 2020/2021 budget Leaseholders would have been able to budget themselves for the additional costs and avoid the £60 charge for payment plans.
27. The Applicant's provide a copy of *Garside and Anson v RYFC and Maunder TaylorUTLC Case Number:LRX/54/2010*. This is a case where the Upper Tribunal was asked to decide whether substantial works should be phased in order to spread increases in service charges to avoid hardship and whether the Landlord's costs of dealing with an application to a Tribunal should be recoverable within the service charge. The authorities quoted within this case suggest that "Where the tenant is successful in whole or in part in respect of all or some of the matters in issue, it will usually follow that an order should be made under s.20C preventing the landlord from recovering the costs of dealing with the matters...."
28. The Leaseholders ask the Tribunal to consider whether any "potential increases in costs: for example, based on an increase in the costs of materials, should be borne by the freeholder rather than the leaseholder" and refer to the case *Jastzembki v Westminster City Council (2013)*. The Tribunal is not informed whether the works have been carried out nor of the final cost of the works themselves so cannot make any judgment as to the final costs and associated fees.
29. Whilst the Tribunal has made relatively minor changes to the charge for 2020/2021 it does not find that the Freeholder or the Managing Agents have acted unreasonably in this matter so declines to make an order under section 20C.
29. The Leaseholders also ask the Tribunal to order, in accordance with paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, that they shall not be liable to pay any "administration charge in respect of litigation costs" which the Freeholder might seek to charge within the Maintenance Fund. The Tribunal has not found any provision within the Lease which would enable the Freeholder to make such a charge.

### **Determination Summary**

30. 1) Are the service charges for cleaning, buildings insurance and gutter cleaning reasonable given comparable market quotes? *Cleaning reduced from £2,000 to £1,500. Insurance already reduced to £2,385. Gutter cleaning reduced from £660 to £300. Rubbish clearance reduced from £1,000 to £500. NB. These are all estimates or provisions for the year 2020/2021 in advance.*
  - 2) Is the 10% fee of £6667.30 charged by SPL for roof works reasonable? *Yes, this fee is reasonable.*
  - 3) Is the 7% fee of £5,600 charged by the surveyor for roof works reasonable? *Yes, this fee is reasonable.*
  - 4) Is the contingency fund charged by the surveyor reasonable? *Yes, this is a reasonable sum and should be paid.. The provision of £2000 to the Reserve Fund is reasonable.*
  - 5) Is it reasonable for SPL to charge Leaseholders £60 for payment plans given that it is not provided in the lease? *Yes, this charge is reasonable.*
30. In addition, the Tribunal declines to make a section 20C Order and finds no provision in the Lease that would allow the Freeholder to recover an administration charge in connection with these proceedings.

### **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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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, the 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.