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

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| **Case Reference** | **:** | **LON/00AR/LSC/2020/0096 P** |
| **Property** | **:** | **102-112 Sackville Court, Romford, Essex, RM3 0ED** |
| **Applicants** | **:** | **Mrs H Gallagher (Flat 104), Mr & Mrs Ryan-Power (Flat 102), Mr S Hogger (Flat 106), Mr Marshall and Ms Mann (Flat 108), Ms O'Haire (Flat 110) and Mr J Harold (Flat 112)** |
| **Representative** | **:** | **Ms D Byrne, Mrs Gallagher's daughter** |
| **Respondent** | **:** | **Remise Investments Limited** |
| **Representative** | **:** | **Mills Chody LLP** |
| **Type of Application** | **:** | **For the determination of the liability to pay a service charge** |
| **Tribunal Members** | **:** | **Judge P Korn**<br>**Mr P Roberts DipArch RIBA** |
| **Date of Decision** | **:** | **24th February 2021** |

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**DECISION**

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## Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicants confirmed that they would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is described immediately below under the heading "Decision of the tribunal".

## Decisions of the tribunal

(A) The charges disputed by the Applicants are payable in full.

(B) Pursuant to section 20ZA of the Landlord and Tenant Act 1985, the tribunal dispenses with those of the statutory consultation requirements which were not complied with by the Respondent.

(C) The Applicants' cost applications are refused.

## Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the payability of a specific service charge.

2. The Applicants' respective flats all appear to be housed within a block of 6 purpose-built flats, which itself comprises part of a development of 3 blocks of 6 flats and 1 block of 12 flats. All of the Applicants have long leases of their respective flats and the Respondent is their landlord.

3. The challenge is to the Applicants' share of the cost of rewiring and/or other electrical works, their aggregate share being £3,600 out of a total charge of £18,000.

## The Applicants' case

4. As a minimum, the Applicants dispute that the works were carried out properly, although there is also a question as to whether the works were carried out at all.

5. At the date of the application the Applicants were in possession of an independent electrical report stating that the communal area wiring was not new. The tribunal assume that the report being referred to here is the one by SDE Services London Limited ("**SDE**").

6. Following receipt of SDE's report, NICEIC carried out an inspection and instructed the existing contractor, Power Electrical Limited ("**Power Electrical**"), to issue a revised and more accurate certificate to describe the works. Power Electrical had been contracted to instal emergency lighting to pre-existing circuits, but Power Electrical was not one of the contractors who had tendered for the work when the Respondent went through the section 20 consultation process.

7. The Applicants are concerned that the communal wiring remains unsafe and the Respondent has not allayed these concerns. They were led to understand that a full rewiring was going to take place, and their understanding had been that this was because the existing wiring was unsafe.

8. As regards the contractor chosen, whilst the Applicants accept that it was the cheapest, it was not registered under NICEIC and could not issue the required certificate.

9. Leaseholders repeatedly asked the landlord's managing agents, Hesperos, for sight of the relevant invoice, but Hesperos would only allow leaseholders to view documents at their office for a fee of £245 per hour or part thereof.

10. Tony McMahon from NICEIC instructed Power Electrical to carry out the remedial works identified in the SDE report during an on-site meeting on 23rd September 2019. Power Electrical were then instructed to issue a new NICEIC certificate which made it clear that the wiring had not been replaced and merely that emergency lighting had been fitted to pre-existing circuits. NICEIC's inspection report clearly states that the wiring/cabling and fuse-boards have not been replaced.

11. The Applicants have also provided a copy of a letter from Watling Solutions dated 26th January 2021 stating that the old wiring is still in place and that "for the works carried out I would estimate for the block £1000". This statement is followed by five bullet points as to what the £1000 would have covered.

## Respondent's case

12. By a letter dated 24th June 2017, Hesperos gave a section 20 notice to each leaseholder (under section 20 of the 1985 Act) to inform them that the Respondent considered it necessary (among other things) to carry out electrical NICEIC tests. That notice invited written observations; one leaseholder expressed the view that the work was unnecessary but no leaseholders recommended an alternative contractor.

13. On 29th January 2018 a review of the electrical system resulted in electricians advising that the wiring in the common parts needed to be

replaced. However, there were insufficient funds in the service charge accounts for a full set of works to be carried out.

14. Then on 4th June 2018 a leaseholder in one of the other blocks (114-124 Sackville Court) reported a burning smell in the communal corridors of that block. The next day electricians appointed by Hesperos – Delta Services Limited ("**Delta**") – attended in response to a report of burning wires, and Delta reported to Hesperos that the electrical wiring at Sackville Court was unsafe. On 15th June 2018 Delta attended again and provided STROMA certificates for each of the blocks, confirming that the electrics were unsafe.

15. On 24th July 2018 Hesperos gave another section 20 notice to each leaseholder with details of estimates that it had obtained to repair the faulty electrics. The cheapest estimate was from Comprehensive Plumbing Electrical Digital (CPED) Services Limited ("**CPED**") at a cost of £3,600 per block. The Respondent considered the works to be emergency works and therefore instructed CPED to start work on 27th July 2018. CPED carried out some works themselves but also sub-contracted some work out to Power Electrical.

16. On 1st September 2018 Hesperos told leaseholders that the works had been carried out (i.e. carried out without full consultation) because of the need to do the work quickly, but it also noted that no leaseholder had nominated an alternative contractor. On 23rd September 2018 CPED provided NICEIC certificates for each block and an invoice providing a comprehensive breakdown of the works carried out. On 13th November 2018 CPED provided Hesperos with a reply to some technical questions raised by a leaseholder. The Respondent comments that the certificates provided on 23rd September 2018 incorrectly detailed the extent of the works as "fixed wiring only", whereas in fact the works included the installation of consumer boards, electrical lights and LED emergency lights.

17. On 13th May 2019 Hesperos received a letter from Ms Byrne on behalf of her mother, Mrs Gallagher, the leaseholder of Flat 104, suggesting that the works carried out by CPED were not sufficiently fit for purpose. The letter was accompanied by the report produced by SDE.

18. On 16th May 2019 Hesperos wrote back taking issue with SDE's report and querying SDE's qualifications but also offering SDE an opportunity to attend Sackville Court to discus the issues with CPED. On 19th August 2019 CPED wrote to Hesperos stating that it had sought to reach out to SDE but had not been successful.

19. Following a complaint to NICEIC, an inspection was then carried out on 18th September 2019 by Tony McMahon from NICEIC. Mr McMahon noted that there were some errors in the certificate issued and that additional certification was required to reflect the extent of the

actual work done. He also listed some minor additional works that needed to be carried out. However, according to the Respondent Mr McMahon "certainly … did not require the multitude of issues raised by SDE in their report to be carried out". Also, Mr McMahon's own report did not state that no wiring had been replaced – it merely stated that a full rewiring had not been completed. It is apparent from CPED's quote that a full rewiring was not envisaged. Mr McMahon also did not take issue with the fact that some works had been sub-contracted to Power Electrical.

20. The additional works noted by Mr McMahon were carried out between 20th November and 2nd December 2019, and Power Electrical produced an additional EIC certificate dated 2nd December 2019. Leaseholders were not charged extra for the additional works.

21. The Respondent does not accept that leaseholders have suffered any prejudice. In addition, the Applicants have produced no evidence that the works could have been carried out cheaper. Nor have they produced any evidence which postdates Mr McMahon's report to suggest that the works have not been completed properly. On the contrary, NICEIC signed off on the works subject to some minor additional items which were attended to between 20th November and 2nd December 2019 and then certified by Power Electrical.

22. To the extent that the Respondent failed to comply with the section 20 statutory consultation procedure, the Respondent now seeks dispensation under section 20ZA.

23. Specifically as regards the letter from Watling Solutions, the Respondent requests that it be excluded from these proceedings. The letter was not provided to the Respondent until 5th February 2021, after the deadline for the Respondent's reply, despite the fact that the directions required the Applicants to provide a quotation from a NICEIC qualified electrician by 11th January 2021. If the tribunal is not prepared to exclude this letter, the Respondent requests that in the alternative the tribunal considers the following submissions: that there is no evidence that Watling is registered with NICEIC, that it is unclear what information Watling was given and that Watling has not produced a quotation covering all the works done by CPED/Power Electrical.

## Tribunal's analysis and determination

24. The Applicants have raised a number of points, but it is important to focus on what this application actually relates to. It is a challenge under section 27A of the 1985 Act to the payability of the charge levied for electrical works.

25. The Applicants state that a full rewiring did not take place, but the Respondent does not dispute this. The Applicants also refer to the fact that the original certificate had to be amended or supplemented and that there was a need for further works, but again the Respondent does not dispute this.

26. There is a disagreement between the parties as to the status of Power Electrical, with the Applicants stating that it was the main contractor whilst the Respondent states that it was a sub-contractor, not objected to by NICEIC, and that the main contractor was CPED. The evidence before us indicates that Power Electrical was merely a sub-contractor.

27. The Applicants clearly have concerns about (a) what they see as an initial decision to fully rewire which was then reversed, (b) the reservations about the works expressed by both SDE and NICEIC, (c) the extent to which the electrics are now safe, and (d) difficulties experienced in obtaining information from Hesperos.

28. However, in relation to the works done, the key issue is whether the amount of £3,600 that they have been asked to pay for these works is reasonable. If, for example, their argument is that the works were initially not fit for purpose then this is not a proper basis for a challenge if they accept that the works now are fit for purpose. It is possible that the Applicants are seeking to argue that the works are still not for purpose, but if so they have not really articulated this point and have not offered any evidence in support of such a point. The Respondent, by contrast, has provided evidence that NICEIC identified specific problems, that these were corrected and that a supplementary certificate was issued at no extra cost to leaseholders.

29. If, in the alternative, the Applicants are arguing that the works done were not worth £3,600 then they have not offered any evidence to demonstrate that the works were not value for money, save for the letter from Watling Solutions to which we will now turn.

30. The letter from Watling Solutions was provided to the Respondent far later than required by the tribunal's directions. This is not merely a technical administrative point; there is a purpose to the tribunal's deadlines and the Applicants' failure to come even close to meeting this particular deadline could in our view cause substantive prejudice to the Respondent if we were to allow this letter to be included in evidence. No reason has been given for the extreme lateness of this piece of evidence, and as a result the Respondent has not had sufficient time to consider it and to provide an alternative opinion or other detailed response. We therefore exclude the Watling Solutions letter from the evidence pursuant to paragraph 8 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In any event, we have reservations as to the weight that it would be appropriate to place on that letter even if it were not excluded. It is unclear what qualifications

Watling have and whether they are registered with NICEIC. It is also (as noted by the Respondent) unclear what information Watling are responding to, and the letter is generally extremely short on detail.

31. It may well be that the Applicants' chief concern relates to the way in which this episode has been dealt with by the Respondent and/or its managing agents. There may or may not be substance in this concern, but it would not be appropriate for us to express a firm view on this point as it is not the subject matter of this application and therefore the Respondent has not had an opportunity fully to address the point. Suffice it to say that if in reality the Applicants' concern was about poor management then their challenge should probably have been to the management fees.

32. The Respondent has applied under section 20ZA of the 1985 Act for dispensation from full compliance with the statutory consultation requirements to the extent that dispensation is required. The Respondent has not filled out a formal application, but the Applicants have not objected to the dispensation point being dealt with. In the context of the nature of the case, the current pandemic and the unsatisfactory consequences of leaving this point to be dealt with at a later date, we consider it proportionate and in both parties' interests to deal with the dispensation application now.

33. The evidence indicates that a particular approach was intended initially but that reports of a burning smell and burning wires indicated that a different and more urgent approach was needed. The Respondent carried out part of the consultation process and received very little by way of feedback from leaseholders. It then instructed the contractor who gave the lowest quote to carry out the works, and the extra works and errors on the certificate which were later identified were dealt with at no extra cost to leaseholders.

34. The tribunal has a fairly wide discretion in relation to dispensation applications. Under section 20ZA, *"where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works …, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements"*. In the present case, the evidence indicates that the works were reasonably urgent, that there was partial compliance with the consultation requirements and minimal feedback from leaseholders, that the cheapest quote was chosen, and that – eventually – the works were completed satisfactorily at no extra cost. The Applicants have provided no tangible evidence to demonstrate that they were prejudiced by the lack of full consultation, and in the circumstances we are satisfied that it is reasonable to dispense with those of the consultation requirements which were not complied with.

**Cost applications**

35. The Applicants have made cost applications under section 20C of the 1985 Act ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

36. The relevant part of Section 20C reads as follows:-

*(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier 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 …".*

33. The relevant part of Paragraph 5A reads as follows:-

*"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".*

34. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the tenants as an administration charge under the Applicants' respective leases.

35. The Applicants have been unsuccessful on the substantive issues. Whilst we have some sympathy with some of their concerns on the basis of the information available, and whilst it is possible that Hesperos could have engaged with the Applicants more positively, ultimately there is in our view no proper basis for their challenge. It would therefore not be appropriate to prevent the Respondent from recovering its costs – to the extent that they are recoverable under the leases – for successfully defending an application in the absence of other compelling reasons for doing so. Accordingly, the tribunal dismisses both cost applications.

**Name:** Judge P Korn **Date:** 24th February 2021

**RIGHTS OF APPEAL**

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## APPENDIX

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

### Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

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

### Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

### Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ..., the tribunal

may make the determination if satisfied that it is reasonable to dispense with the requirements.

**Section 27A**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

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

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

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