

**HM COURTS & TRIBUNALS SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**  
**DETERMINATION WITH REASONS**  
**LANDLORD AND TENANT ACT 1985 – SECTION 27A**

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**Property:** Flat 15 Mount Court, Mount Road, Wallasey,  
Merseyside CH45 9JS

**Applicant:** Miss P Sinnott

**Respondent:** Mount Court Management (Wallasey) Limited

**Tribunal Members:** Mr J W Holbrook LLM (Chairman)  
Mr W T M Roberts FRICS  
Mr L P Bottomley M.I.Fire.E., JP

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**DETERMINATION**

**The unanimous determination of the Tribunal is that:**

- A. Subject to any dispensation of the statutory consultation requirements which may subsequently be granted by a tribunal, the Applicant's liability to contribute to the Roof Renewal Costs (as defined in paragraph 14 below) is limited to £250.00.**
- B. Within 14 days of the date on which this determination is sent to the parties, the Respondent shall reimburse the Applicant for the application and hearing fees which she has paid in respect of these proceedings in the sum of £250.00.**

## REASONS

### Background

1. On 11 December 2012, Miss Patricia Sinnott of Flat 15 Mount Court, Mount Road, Wallasey CH45 9JS ("the Property") applied to the Tribunal for a determination of her liability for service charges under her lease of the Property. In particular, Miss Sinnott sought a determination as to her liability to contribute to the cost of renewing the roof of the building ("Mount Court") which comprises the Property together with 14 other residential flats. The roof renewal works had been undertaken in 2012, and the Respondent management company had demanded a contribution of £2,650.00 from Miss Sinnott towards the cost of these works as a surcharge to the ordinary 2012 service charge.
2. A hearing took place on 20 May 2013 at The Queens Royal, New Brighton. Miss Sinnott represented herself at the hearing, and the Respondent was represented by Mr & Mrs Bartlett of Flat 9 Mount Court. Mr & Mrs Bartlett are former directors of the management company. Several other leaseholders of Mount Court also attended. The parties had each made written submissions in advance of the hearing and the Tribunal was provided with a bundle of relevant documents, including a copy of the lease of the Property, service charges accounts, demands and invoices.
3. The Tribunal made an unaccompanied external inspection of Mount Court prior to, but on the same day as, the hearing. We noted that Mount Court is a three storey purpose-built block of flats dating from the 1970s. The building (which appeared to be in fair condition) is of brick construction under a pitched tiled roof. It was apparent that the entire roof had been renewed relatively recently, and that the fascias, soffits and rainwater goods had also been renewed.

**The Law**

4. Section 27A(1) of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

5. In making any such determination, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

6. "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."

7. Where a landlord (or any other person who has the right to enforce payment of a service charge) proposes to carry out works on a building which will result in a leaseholder being required under the terms of her lease to make a service charge contribution in excess of £250.00 towards the cost of those works (in which case those works are referred to as

“qualifying works” in the 1985 Act), it must comply with certain statutory consultation requirements before carrying out the works. Section 20 of the 1985 Act makes it clear that, unless the consultation requirements are dispensed with by a leasehold valuation tribunal, the consequence of a failure to comply with those requirements is that the liability of the leaseholder to contribute towards the cost of the works is limited to £250.00.

8. The statutory consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987). The consultation requirements set out in Part 2 of Schedule 4 to the Regulations are those that are relevant to the circumstances of this case.

#### **Issues and evidence**

9. Miss Sinnott accepts that, under the terms of her lease of the Property she is obliged to pay a service charge to the respondent and that the costs associated with the roof renewal works which are the subject of this dispute are, in principle, costs towards which she is required to contribute. In general terms, Miss Sinnott is required to contribute one fifteenth of the total costs and expenses incurred under the Mount Court service charge.
10. Miss Sinnott does not dispute that the works have been undertaken or that they were necessary in the circumstances. Nor does she take issue with the standard of the works. Miss Sinnott’s complaint is that the Respondent did not adequately consult with her before the works were undertaken. She argues that the charge is unfair because she was not shown an estimate for the works before they were undertaken. Nor was she provided with copies of relevant invoices when the Respondent asked her to pay a contribution towards the cost of the works.

11. Mr Bartlett explained the background to this matter during the hearing. He explained that, in 2011, a local roofing contractor had been engaged to repair the existing roof following a number of leaks. The contractor reported that the roof was in a poor state and that it required renewal rather than repair. The Respondent obtained three estimates for carrying out the necessary work (which ranged from approximately £16,000.00 to £24,000.00). On 18 October 2011, the Respondent wrote to each of the leaseholders (including Miss Sinnott) to inform them of the need to renew the roof; that estimates for the work had been obtained; and that a surcharge would be needed to fund the work. The Respondent did not send copies of any of the estimates for the work with this letter. Nor did it offer to make the estimates available for inspection.
12. The matter was discussed at the Respondent's AGM in December 2011 (which Miss Sinnott chose not to attend) and, in March 2012, the Respondent entered into a contract for the works with Furber Roofing Limited. The contract price was approximately £18,000.00. Each leaseholder was notified that they would be required to contribute a one-off surcharge of £750.00 (the balance of the cost presumably being funded from the service charge reserve fund).
13. The works commenced at the end of March 2012. However, once the roof covering had been stripped off, it became apparent that there were serious structural problems with the roof trusses. This was confirmed by a structural engineer, who also advised that some of the building's upper brickwork was potentially unsafe, and that the soffits and gutters were in a poor state. The Respondent reported this news to the leaseholders in a letter dated 24 April 2012, and it instructed Furber Roofing Limited to carry out the additional works (at significant extra cost). On 21 May 2012 the Respondent wrote to the leaseholders again informing them that the total

estimated cost of the roof renewal was £47,000.00 and that they were each required to pay a further surcharge of £1,900.00 to fund the work.

14. Mr Bartlett confirmed to the Tribunal that the actual costs incurred in connection with the renewal of the roof (referred to in this decision as “the Roof Renewal Costs”) were as follows:

Cost of roofing works	£46,620.00
Structural engineer’s fee	£ 795.00
Building regulations charges	<u>£ 428.00</u>
TOTAL	£47,843.00

15. The Tribunal must determine, not only whether the Roof Renewal Costs were incurred in compliance with section 19(1) of the 1985 Act, but also whether Miss Sinnott’s liability to contribute to those costs is limited by section 20 of that Act by reason of the Respondent having failed to comply with the statutory consultation requirements in respect of the works.

**Conclusions**

16. On the basis of the limited evidence presented to the Tribunal, we are satisfied that the Roof Renewal Costs were reasonably incurred and that the works and services in relation to which they were incurred were carried out and provided to a reasonable standard.
17. However, these works were clearly “qualifying works” for the purposes of section 20 of the 1985 Act – and this would have been the case even had the need for additional (and unexpected) structural work not emerged. The Respondent was therefore under a duty to comply with the relevant consultation requirements in the 2003 Regulations, and we must determine whether or not it did in fact comply with those requirements.

18. Reference should be made to the 2003 Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:
- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
  - obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
  - make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
  - give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.
19. It is clear that the Respondent did make some effort to consult with the leaseholders before entering into a contract for the works with Furber Roofing Limited. It is also clear that Miss Sinnott did not make any observations on the matter at the time, though she had opportunity to do so. However, it is also clear that elements of the statutory requirements are missing from the process which the Respondent followed: In particular, it failed to invite leaseholders to nominate contractors from whom estimates for the works might be obtained; it omitted to provide the

requisite details of the estimates that were obtained, and failed to make the estimates available for inspection; and it failed to give notice explaining why the contract was not awarded to the lowest bidder.

20. As a consequence of these failings, section 20 of the 1985 Act has the effect of limiting Miss Sinnott's liability to contribute to the Roof Renewal Costs to £250.00. Nevertheless, it should be noted that this limitation on Miss Sinnott's liability would cease to apply if the Respondent were to apply for (and then be successful in obtaining) a dispensation under section 20ZA of the 1985 Act. Subsection (1) of that section provides:

Where an application is made to a leasehold valuation 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.

21. A tribunal has power to make such a determination after, as well as before, the works in question are carried out. However, the question of whether a dispensation should be granted in the present circumstances was not an issue for determination in the current proceedings.

#### **Tribunal application and hearing fees**

22. Finally, we have considered whether the Tribunal should exercise its power under regulation 9(1) of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 to require any party to the proceedings to reimburse any other party for the whole or any part of any fees paid by him or her under those Regulations in respect of the proceedings. In the present case Miss Sinnott has paid an application fee of 100.00 and an additional hearing fee of £150.00.



23. We consider it just and equitable to order the Respondent to reimburse these fees in their entirety. Miss Sinnott disputed her liability to contribute the full amount demanded from her in respect of the Roof Renewal Costs on the basis that the Respondent had failed to consult adequately about the works. She has been successful in persuading the Tribunal that this was indeed the case, and she is therefore entitled to recover the fees she was required to pay in order to bring the matter before the Tribunal.

Mr J W Holbrook  
Chairman

14 June 2013