FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CQ/LIS/2022/0019**
Property	**:**	**68 Hawthorn Lane, Coventry, CV4 9PB**
Applicant	**:**	**Joanne Loosley**
Representation	**:**	**In person**
Respondent	**:**	**Citizen Housing Group Limited**
Representation	**:**	**By its officers, Mr Williams (advocate) and Mr Singh, Technical Liaison Manager (witness)**
Types of Application	**:**	**Liability to pay and reasonableness of service charges – Section 20C and Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act")**
Tribunal Members	**:**	**Judge Anthony Verduyn** **Mr David Satchwell FRICS**
Date of Hearing	**:**	**4th November 2022**
Date of Decision	**:**	**6th January 2023**

DECISION

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1. The Applicant, Ms Joanne Loosley ("**Ms Loosley**"), is the lessee of the Property, 68 Hawthorn Lane, Coventry, under a long lease dated 15th July 1985 and originally made between (1) the Council of the City of Coventry and (2) Beatrice Cresswell. Ms Loosley's landlord is now Citizen Housing Group Limited ("**Citizen**"). The Property is a ground floor flat, comprising one of four connected residential units, only two of which are subject to long leases (the other two being short let social housing). The dispute between Ms Loosley and Citizen relates to a single element of the service charge for the Property: a sum billed to her of £1,312.50 for replacement balustrades for an external communal stairway. Ms Loosley alleges that it is irrecoverable under the lease and for failure to comply the requirements for consultation on works where the unit cost exceeds £250, but she also alleges that the sum claimed is excessive given the measured physical extent of the required work and the unit costs of the new balustrades. Citizen at the hearing accepted that the measurement of the balustrade was in error and the sum should be reduced to £1,250, but otherwise disputed the allegations.

2. The Tribunal inspected the external staircase at the Property and had a more general tour of the estate of which the Property forms a small part. Examples of unimproved balustrades were seen; the balustrade at 63 Aldrich Avenue corresponding exactly to the unimproved balustrade in question. This had gaps in its upright elements that may not satisfy current legislation, as too wide, but were sufficient at the time of the building of the estate. There were also in evidence balustrades where the original form had had gaps enclosed with wire mesh. The replacement balustrade in question was a modern design with perforated panels. The quality of the work was not in issue. The Tribunal measured the panels and arrived at a length a little under 12 metres, which was consistent with Ms Loosley's measurement of 12.5 metres and significantly below the 14 metres provided for in the original service charge amount. It follows that Citizen was correct to make a concession on the measured extent of the works.

3. The Tribunal followed the site view with a hearing at which Ms Loosley and Mr Singh gave evidence, and Ms Loosley and Mr Williams made submissions consistent with the respective written statements of case.

4. The relevant lessee's covenants appear in Clause 4 of the lease. The part relied upon by Citizen states that the lessee will:

   "STRUCTURAL DEFECTS

   "(4) Bear a reasonable part of the costs of (a) carrying out repairs not amounting to the making good of structural defects (b) the costs of making good any structural defects of which the Council have notified the Lessee before the date of this Lease or of which the Council do not become aware of earlier than ten years after the date of this Lease and (c) insuring against risks involving such repairs of the making good of such defects"

   The lease contained usual service charge provisions, which were not in issue.

5. The first issue to be considered by the Tribunal was whether the replacement of the balustrade falls within Clause 4(4) as asserted by Citizen. Ms Loosley contends that the work was "an upgrade" rather than making the balustrades safe and compliant. The latter could have been achieved with mesh behind the metal railings, as elsewhere in the estate. Citizen's evidence included a "Condition Survey Report" prepared for it by Pellings consultant surveyors after an inspection of the estate. The portion relating to the relevant balustrade identifies it as cast iron and describes the condition: "Surface rusting generally throughout. Gaps to balustrade are 200mm open width and therefore do not meet current Regulations." Pellings made a recommendation: "Install new perforated powder coated metal panels in replacement of the existing balustrading". Significantly, under "Life Cycle" were the following details: "Remaining life – 15 years", "Life cycle – 60-70 years" and "Constructed – 1950's".

6. The Tribunal finds that the evidence for Citizen does not support any claim for the replacement balustrade to qualify as a repair. The original balustrade had 15 years' life left in it upon inspection in 2019 and no disrepair was identified, save removal of surface rusting. The balustrade had no structural defect, it merely no longer met the current requirements were it newly installed, and there was no legal burden to replace it. Mesh could have been added to it, but even that would not be a repair. Citizen was within its rights to replace the balustrade, but not to charge it as a repair in these circumstances: Ms Loosley was correct, it was an improvement. It was also,

essentially, discretionary on the part of Citizen and evidently not universally carried out upon the estate. The lease contained no requirement for the balustrade to meet current regulations, which was the only given reason for the works in the notice of intention to carry out qualifying works under Section 20 of the 1985 Act (the "**initial notification letter**" below). It follows that the sum in irrecoverable under the lease.

7. Had repainting of the balustrade been done, then a charge could have been made for this (Pellings put this at £105 for No.68), but repainting was not done and was rendered unnecessary by reason of the improvements carried out. There is no liability accordingly.

8. The second issue was whether the initial notification letter required under Section 20 of the 1985 Act had been complied issued to Ms Loosley. She denies receipt of it and explains that, when a copy was sought, it took over a week for a copy to be found. Ms Loosley stated to the Tribunal that she had been abroad in Australia at the time Citizen says the first letter was issued dated 10th February 2020. She returned at the end of that month and sorted her mail at leisure, since she was not then working, but there was nothing of this sort. When the second letter was issued on 1st June 2020 disclosing quotations received, she immediately challenged the costings, but was told that the consultation period was closed. She persisted in her challenges without success.

9. Ms Loosley also asserts that the other long leaseholder served by the balustrade, Dawn Peckham at No.70, was also not in receipt of the initial notification letter. She believed that Ms Peckham had paid in any event and then been told it was too late to challenge the liability. Ms Peckham did not give evidence, but Ms Loosley disclosed an exchange on "WhatsApp" between them and dated 20th June 2020. When told of the intended charge, Ms Peckham responded: "*Sorry I know nothing about it received no notice. I'll ring them on Monday do you have a contact number please?*" A copy of the second letter was then sent by Ms Loosley, and this elicited the following response from Ms Peckham: "*Okay thanks it sounds things are quite far on – there is buildings insurance why haven't they utilised this as it's a safety issue? Citizen company are known to me as notoriously difficult to deal with – however they failed to use my contact they hold to inform of works therefore not*

followed legal guidelines – I do think we will have to pay but can't think why they've decided things are a safety issue? This is what insurance s for the railings aren't in poor condition, if they chose to upgrade that's up to them, that's why we have to pay them building insurance. Thank you for informing us of this. Regards Dawn". Insurance was not treated as relevant before the Tribunal.

10. At the hearing, Citizen explained that they sent out the initial notification letter using mail merge. It was directed to 12 long leaseholders across various blocks and used 16 addresses, as 4 flats were sublet. Citizen had not, in fact, used the correct address for Ms Peckham, sending the letter to No.70 and not the given contact address. They had withdrawn the charge from Ms Peckham accordingly and contrary to the understanding of Ms Loosley. The Tribunal notes that this was consistent with the exchange on WhatsApp (the bill being cancelled later than the last message disclosed). On further questioning, it became clear that the mail merge was operated by an external provider, which had since been changed, and given the elapse of time the details of posting were not available.

11. The Tribunal accepts the evidence of Ms Loosley that she was not sent the initial notification letter within the consultation process. The Tribunal found her description of events compelling: she had been away, returned and sorted her post without finding such a letter. Had she found one, then given her response to the letter of 1st June 2020, she would most probably have responded to it. No letter had been received at the correct address for Ms Peckham and it was unclear whether one was sent to No.70 at all. The evidence is that the occupation tenant did not inform Ms Peckham of such a letter, given the content of the WhatsApp exchange. There is no evidence for the proper operation of the mail merge by the third party provider. Citizen pointed out in evidence that no letter was returned to sender, but that would only arise if a letter had been sent in the first place, and the Tribunal is not satisfied on the balance of probabilities that the mailing of initial notification letters was properly carried out. For this reason, the maximum that could be claimed by Citizen in these proceedings would be £250 but, for the reasons already identified, that sum is not due under the lease.

12. Ms Loosley challenged the unit costs for the works done, on the basis that she spoke to employees of Star Metalwork Limited, when they were installing the new

balustrade and they said they would charge about £300 per panel. There were 10 panels and the sum should accordingly be £3,000, hence £750 for No.68 and neither £1,312.50 nor £1,250 on the adjusted sum. The document evidence of Citizen is that its charge was based on £375 per metre, and without a sum for preliminaries estimated at £173.93 per residential unit. Citizen say that it went through a tender process, had two quotations and chose the cheapest (the difference in quotations was between JB Specialist Refurbishments Limited at £352,782 and Restek UK Limited at £862,366.88, so the choice was obvious). JB Specialist Refurbishments Limited may have used Star Metalwork Limited for fabrication, but that is not the same as the costs chargeable under the quotation or the total costs of the works.

13. Whereas this issue is not determinative of the application, which succeeds for Ms Loosley for the reasons set out above, the Tribunal prefers the case for Citizen on this issue. Manufacture costs do not represent those full costs of works of this sort by any means and the tender process was properly carried out (albeit only attracting two quotations). Citizen cannot be criticised on this score.

14. In the circumstances, Ms Loosley is successful in her application and the charge of £1,312.50, now reduced to £1,250, is not payable at all.

15. Having been entirely successful in her application, it would not be appropriate for Citizen to seek to recover any costs of the proceedings by way of service charge. Any such sums are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Ms Loosley, pursuant to Section 20C of the 1985 Act accordingly. In case it is required, the Tribunal also makes like order in respect of any administration charge under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Judge Anthony Verduyn

Dated 6th January 2023

