FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UH/LIS/2020/0018**
HMCTS	**:**	**CVP**
Property **CM16 5DN**	**:**	**16a and 16b St John's Road, Epping, Essex**
Applicant	**:**	**1. William Jonathan Hoye & Kirsty Lauren Hoye (Flat 16b)** **2. Nicola Fox (Flat 16c)**
Representative	**:**	**Pro-Leagle**
Respondent	**:**	**Assethold Limited**
Managing Agent	**:**	**Eagerestate**
Type of Application	**:**	**1) To determine the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)** **2) To determine the reasonableness and payability of Administration Charges (Schedule 11 Commonhold and Leasehold Reform Act 2002)** **3) For an Order to limit the service charges arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)** **4) For an Order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002)** **5) To determine the reasonable costs of enfranchisement payable to the Respondent (section 33(1) of the Leasehold reform, Housing and Urban Development Act 1933)**
Tribunal	**:**	**Judge JR Morris** **Ms E Flint DMS FRICS**
Date of Application	**:**	**7th August 2020**
Date of 1st Directions	**:**	**18th August 2020**

Date of 2nd Directions : 8th April 2021
Date of 3rd Directions : 29th April 2021
Date of Hearing : 24th June 2021
Date of Decision : 3rd September 2021

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal finds that the Respondent has omitted to inform the insurers of a material fact which is likely to cause the insurance to be repudiated or reduced. The Tribunal therefore determines the insurance premiums to be unreasonable and not payable.

2. The Tribunal determines that the reasonable Service Charge payable for each of the years in issue by each of the Applicants is for the year ending 31st December:
   2018 £270.00
   2019 £407.58
   2020 £793.40

3. The Tribunal determines that the Administration Charges of £2,282.61 are unreasonable and not payable.

4. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings

should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

5. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

6. The Tribunal determines that the reasonable Valuation Costs of the Respondent payable by each of the Applicants pursuant to section 33 of the Leasehold Reform and Urban Development Act 1993 are £1,500.00 including VAT.

Reasons

Application

7. Applications were received for:
   1) A determination of the reasonableness and payability of Service Charges incurred for the period 1st January to 31st December 2018, 2019 and for the costs to be incurred for the year ending 31st December 2020 ("the years in issue"). (Section 27A Landlord and Tenant Act 1985) on 7th August 2020;
   2) A determination of the reasonableness and payability and Administration Charges (Schedule 11 Commonhold and Leasehold Reform Act 2002) 1st July 2021;
   3) An Order to limit the service charges arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985) on 7th August 2020;
   4) An Order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002) on 7th August 2020;
   5) A determination of the reasonable costs of enfranchisement payable to the Respondent (section 33(1) of the Leasehold reform, Housing and Urban Development Act 1933) on 7th August 2020.

The Law

8. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

9. The Tribunal did not inspect the Development in which the Property is situated due to Government restrictions and sets out the following description based upon the Statements of Case together with the photographs and documents annexed thereto, the Lease and the Internet.

10. The Property occupies a rectangular plot of land. The property has a garden at the front and side, and private parking and a grass garden at the rear.

11. The Property is a two-storey semi-detached building (the Building). The Property was originally constructed as a single dwelling. In 2015 two self-contained residential apartments were added to the original dwelling. These are of one or two bedrooms, a bathroom, living/dining room and a kitchen. There is an external door on the front elevation which gives access to a common entrance from which rise stairs to the first floor flat and at the ground floor are the doors to the ground floor flat and the adjacent house.

12. The Property is of traditional cavity wall construction. The main roof is of dual pitched timber with slate roof tiles. To the rear there is a double storey extension which has a pitched roof of slate tiles. The roof to the ground floor bay is of mono pitch construction and covered in a slate roof covering.

13. The windows are of PVCu with double glazed units. The external doors are of PVCu construction. The windows and doors throughout are supported with steel lintels. The floor structure of the property is a mix of suspended timber and solid construction topped with carpet, laminate, vinyl and tile floor finishes throughout. Internal walls throughout the property are a mixture of solid brick and stud partitioning finished with plasterboard and a combination of skim finishes and wallpaper throughout.

14. There are parking restrictions to the immediate roads surrounding the property. It is located within a predominantly residential neighbourhood. There are good transport links and regular London Underground services from Epping, located 0.5 miles from the property.

The Lease

15. A copy of the Leases for the Property was provided. That for Flat 16b was dated 4th October 2015 between (1) Farringford Developments limited and (2) William Jonathan Hoye and Kirsty Lauren Hoye and that for Flat 16c was dated 6th November 2015 between (1) Farringford Developments limited and (2) Nicola Fox. Both Leases are for a term of 125 years from the date of the Lease.

16. The relevant clauses are as follows:

17. 1.1 Definitions

Building: the land and Building known as 16b and 16c St John's Road Epping Essex CM16 5DN shown coloured blue on Plan 2

Common parts
(a) the front door, entrance hall, passages, staircases and landings of the building;
(b) the external paths driveways, yard of the Estate
Shown hatched black and coloured orange on Plan 1

Tenant's proportion 50%

Rent Payment Dates: 1st January and 1st July

Retained Parts:
All parts of the Building other than the Property and the Flats including:
(a) the main structure of the Building including the roof and roof structures, the foundation the external walls and internal load bearing walls, the structural timbers, the joists and the guttering
(b) all parts of the Building lying below the floor surfaces or above the ceilings

18. Schedule 4 – Tenant's Covenants

2. Service Charge

2.1 The Tenant shall pay to the Landlord the estimated Service Charge for each Service Charge Year in half yearly equal instalments on each of the Rent Payment Dates

2.3 If, in respect of any Service Charge Year, the estimate of the Service Charge provided by the Landlord is less than the Service Charge, the Tenant shall pay the difference on demand. If, in respect of any Service Charge year, the estimate provided by the Landlord of the Service charge is more than the Service Charge, the landlord shall credit the difference against the Tenant's next instalment of the estimated Service Charge (and where the difference exceeds the next instalment then the balance of the difference shall be credited against each succeeding instalment until it is fully credited)

4. Interest on late payment

To pay interest to the Landlord at the Default Interest rate (both before and after any judgement) on any Insurance Rent, Building Service Charge or other payment due under this lease not paid within 21 days of the date it is due.

7. Costs

7.1 To pay on demand the costs and expenses of the Landlord…in connection with or in contemplation of any of the following:

7.1.1 the enforcement of any of the Tenant Covenants;

7.1.2 preparing and serving any notice in connection with the lease under section 146 or 147 of the law of Property Act 1925…

19. Schedule 6 – Landlord Covenants

Insurance

2.1 To effect and maintain insurance of the Building against loss or damage caused by any of the Insured Risks with reputable insurers, on fair and reasonable terms that represent value for money, for an amount not less than the Reinstatement Value subject to:

2.1.1. any exclusions. Limitations, conditions or excesses that may be imposed by the insurer; and

2.1.2 insurance being available on reasonable terms in the London insurance market.

2.2 To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building (after any discount or commission but including IPT. Such notice shall state:

2.2.1 the date by which the gross premium is payable to the insurers: and

2.2.2 the Insurance Rent payable by the tenant, how it is calculated and the date on which it is payable.

2.3 In relation to any insurance effected by the Landlord under this clause, the Landlord shall:

2.3.1 at the request of the Tenant supply the tenant with:
2.3.1.1 a copy of the insurance policy and schedule; and
2.3.1.2 a copy of the receipt for the current year's premium.

2.3.2 notify the tenant of any change in the scope, level or terms of cover within five working days after the Landlord has become aware of the change;

2.3.3 use reasonable endeavours to procure that the insurance contains a non-validation provision in favour of the Landlord in respect of any act or default of the tenant or any other occupier of the Building; and

2.3.4 procure that the interest of the Tenant and their mortgagees are noted on the insurance policy, either by way of a general noting of the tenants' and mortgagees' interests under the conditions of the insurance policy or (provided that the Landlord has been notified of any assignment to the Tenant pursuant to paragraph 9.6 of Schedule 4) specifically.

4. Services and Service Costs

4.1 Subject to the tenant paying the Service Charge, to provide Services

4.2 Before or as soon as possible after the end of each service Charge Year, the Landlord shall prepare and send to the tenant an estimate of the Service Costa for the Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year

4.3 As soon as reasonably practicable after the endo of the Service Charge Year, the Landlord shall prepare and send to the tenant a certificate showing the Service Costs and the Service Charge for that Service Charge year.

4.4. To keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and permit the Tenant, on giving reasonable notice to inspect the accounts records and receipts by appointment with the Landlord or its accountants or managing agents.

4.5 If any cost is omitted form the calculation of the Service Charge I nay Service Charge year, the Landlord shall be entitled to include it in the estimate and certificate of the Service Charge in any of the following Service Charge Year, Otherwise and except in the case of a manifest error, the Service Charge Certificate shall be conclusive as to all matters of fact to which it refers.

20. Schedule 7 – Services and Service Costs

Part 1 – Services
The Lease contains a list of 14 Services which include cleaning, maintaining, decorating, repairing and replacing the Retained Parts and the Common Parts and the fittings and equipment, fire prevention and detection equipment in the Common Parts, the lighting in the Common Parts.

Part 2 – Service Costs
1.1 The Service Costs include
1.1.1 all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:
1.1.1.1 providing the Services
1.1.1.3 complying with the recommendations and requirements of the insurers of the building (insofar as those recommendations and requirements related to the retained Parts)
1.1.1.6 putting aside such sum as shall reasonably be considered necessary by the Landlord…to provide reserves or sinking funds for items of expenditure to be expected to be incurred at any time in connection with providing the Services
1.1.2 the costs, fees and disbursement reasonably and properly incurred of:
1.1.2.1 managing agents employed by the Landlord for the carrying out and provision of the Services or, where the managing agents are not employed, a management fee for the same
1.1.2.2 accountants employed by the Landlord to prepare and audit the Service Charge accounts

Hearing

21. A Hearing was held by CVP on 29th April 2021 and was attended by, the Applicants, Mr William Hoye, Ms Nicola Fox and their solicitor, Ms Corinne Tuplin of Pro Legale and Mr Ronni Gurvitz of the Managing Agents, Eagerestate, representing the Respondent.

Evidence

22. The Applicant and Respondent provided a Statement of Case in the form of a Scott Schedule further supported by witness statements together with a number of other documents in a Bundle.

23. Copies of the Estimated Service Charge Accounts for the costs to be incurred and of the Actual Service Charge accounts for the costs incurred ("the Demands") were provided as follows:

24. **Estimated Service Charge** Accounts for the costs to be incurred were provided for the year **23rd March 2018 - December 2018** dated 6th August 2018

Insurance March 2018/2019 & Broker Fee £1,619.00

Common parts electricity	£150.00
Fire Health & Safety service	£300.00
Fire Health & Safety Risk Assessment	£400.00
Drainage Cleaning	£500.00
Surveyors for Insurance purpose	£1,000.00
Accountant fee	£180.00
Management fee December 2018/2019	£568.80
Repair fund (if needed)	£1,500.00
Total	£6,217.80

Apportionment @ 50% £3,108.90

25. **Actual Service Charge** accounts for the costs incurred were provided for the period **23rd March 2018 to 31st December 2018** dated 3rd December 2018

Insurance March 2018/2019 + Broker's Fee	£1,541.90
Common parts electricity	£0.00
Key cutting	£4.95
Fire Health & Safety Service	£246.00
Accountant's Fee £150.00	
Management Fee March - December 2018	£474.00
Total	£2,416.85
Apportionment @ 50%	£1,208.43

26. **Estimated Service Charge** Accounts for the costs to be incurred were provided for the year **1st January 2019 - December 2019** dated 3rd December 2018

Insurance March 2019/2020	£1,619.00
Common parts electricity	£150.00
Fire Health & Safety service	£300.00
Fire Health & Safety Risk Assessment	£400.00
Drainage Cleaning	£500.00
Surveyors for Insurance purpose	£1,000.00
Accountant fee	£180.00
Management fee December 2018/2019	£568.80
Repair fund (if needed)	£1,500.00
Total	£6,217.80

Apportionment @ 50% £3,108.90

Plus debit from previous year -£1,208.43
Total payable £4,317.32

27. **Actual Service Charge** accounts for the costs incurred were provided for the period **1st January 2019 - December 2019** dated 2nd December 2019

Insurance March 2019/2020 + Broker's Fee	£1,578.80
Window Cleaning	£70.32
Fire Health & Safety risk assessment	£240.00

Fire Health & Safety Service	£246.00
Accountant's fee	£180.00
Management fee December 2018/2019	£568.80
Total expenses	£2,883.92
Apportionment @ 50%	£1,441.96

28. **Estimated Service Charge** Accounts for the costs to be incurred were provided for the year **1st January 2020 - December 2020** dated 2nd December 2019

Insurance March 2020/2021	£1,657.74
Window Cleaning	£100.00
Fire Health & Safety service	£250.00
Drains Service	£150.00
Accountant fee	£210.00
Management fee December 2019/2020	£573.60
Repair fund (if needed)	£1,500.00
Total	£4,441.34
Apportionment @ 50%	£2,220.67

29. The Actual Service Charge accounts for 2020 were not provided.

Background

30. The Applicants provided witness statements stating that they were the leasehold owners of Ground and first Floor Flats at the Property. They said that that they had purchased their Leases in 2015 from Farringdon Developments Limited, the property developer who converted the Property into two flats. The flats were initially managed by St Johns Management Company. A service charge demand was sent at the start of the year, payable in six-month instalments.

31. Previous Estimated Service Charge Account was provided for the year 1st January 2016 to 31st December 2016 on page 137 of the Bundle:

Building Insurance	£425.00
Communal Electricity	£200.00
Accounts Fee	£100.00
Emergency lighting Test	£100.00
Management Fee	£100.00
Maintenance Fund	£275.00
Total	£1,200.00

32. Expenses such as cleaning of communal hallway, stairs and gardening had been removed from the demands upon mutual consensus and were carried out by the Tenants.

33. By way of letter of 5 April 2017, notification was received from Century 21 Harris & Martin Lettings & Management Limited in Danbury Essex that the freehold had been purchased by Steve Martin and Andrea Vitazkova. Enclosed was an Invoice dated 5 April 2018 for Buildings' Insurance with quotation information and an administration fee of £10%, representing £184.20 per flat

in total. The arrangement regarding communal cleaning and garden maintenance continued.

34. On 23 March 2018 the Tenants said they were informed that the freehold had been transferred to Trellick Limited and that Eagerstates had been appointed as managing agent. This was incorrect as the Respondent had purchased the freehold.

35. On 9 April 2018, Eagerstates demanded keys to the property to inspect the common parts as part of their duties as managing agent.

36. On 6 August 2018 an estimate for 2018 was received. The charges for both properties collectively had gone from £368.40 - £3,691.90 in the space of one year. The estimate seemed unreasonably high and no account was taken of the common parts shared by the house with regard to the Insurance which required 'a fair and reasonable proportion' 'on fair and reasonable terms' and 'value for money').

37. Mr Hoye said that he discussed his concerns by email with Mr Gurvitz as it appeared the Agents only operated via email. Mr Gurvitz said that there were no legal responsibilities regarding the house and they did not have to make any contribution towards the upkeep of the common parts they used. The Deed of Easement between the owners of the house and the freeholder was provided.

38. Mr Hoye said that they made a payment of £1,208.43 on 30th January 2019 representing monies the Respondent stated were payable for the Actual Service Charge costs incurred for 2018 under protest.

39. Mr Hoye said they received a demand from the Respondent's Solicitors for the outstanding sums on 4th February 2019. He said that they instructed Chan Neill Solicitors to request service charge documentation by way of letter of 19th February 2019. A cursory response was received by email from Scott Cohen solicitors on 19th March 2020 and enclosed service charge demand (estimated and incurred) for 2018, AXA Buildings' Insurance certificate for 2018/19 and a Policy Wording document from Lockton Real Estate and Construction which Applicant 1 doubted related to the Insurance.

40. The Applicants have subsequently sought to enfranchise.

Issues re Service Charges

41. The Tribunal identified the following issues:
    1. Payability – the Applicant alleges that the Insurance and Service Charges are not properly demanded and are therefore not payable.
    2. Apportionment – the Insurance and Service Charges are not properly apportioned
    3. Service Charges – Service Charges are unreasonable and therefore not payable

Payability

Applicants' Case

42. The Applicants stated as follows:

43. Insurance Demands must comply with paragraph 2.1 of Schedule 6, p27, Interpretations, p4, 2.2 of Schedule 2, p27 and 2.3.3 of Schedule 2, p27) lays down the minimum requirements of a valid notification of Buildings' Insurance: -

1. It must notify the leaseholder by way of Notice
   (1) the date by which the gross premium is payable to the insurers and
   (2) the insurance rent payable, how it has been calculated and the date upon which it is payable.
2. The Notice must include an explanation of the manner in which the policy represents "value for money…on fair and reasonable terms' (clause 2.1 of Schedule 6, p27 of Lease).
3. The Notice must include an explanation of the manner in which "a fair and reasonable" proportion of the cost has been apportioned to each flat by the landlord (clause 1.1a Interpretations, p4 of Lease).
4. The buildings' insurance premium stated as payable in the Notice must not include any commission or discounts [e.g., as provided by Insurer for providing bulk portfolio cover or for non-claims] (clauses 1.1a Interpretations, p4 of Lease and 2.2 of Schedule 6, p27 of Lease).
5. The Landlord must notify the leaseholders within five working days of the Landlord being aware of any change in the scope, level or terms of cover (clause 2.3.3 of Schedule 2, p27 of Lease).

44. The Respondent arbitrarily applied a 50% cost per flat for all relevant years despite this split only applying to service charges set out in Clause 1, Part 2 of Schedule 7 of Lease which does not include insurance. The Respondent should have assessed what proportion of the insurance should reasonably be payable by the adjoining house sharing permitted access rights to common parts of the building but did not do so.

45. The Service Charge Invoices (Estimates) received for each of the years in issue failed to comply with the contractual provisions of the Leases (para 4 inclusive above) in that: -

- They included items which were not intended to be included under clause 1, Part 2 of Schedule 7 of the Lease. Insurance is not part of the service charge and has its own procedure.
- Payment is wrongly requested for the entire year, as opposed to payment in six-monthly instalments on 1 January and July with broker fee added and no accounting for discounts, commissions etc.
- No apportionment of the service charge to cover six-monthly instalments or reference made to this requirement

46. The Service Charge Invoices (Actuals) received for every relevant year failed to comply with the contractual provisions of the Leases in that the Applicants

were not notified of the service charges payable for every year "as soon as reasonably practicable".

47. In *London Borough of Southwark v Dirk Andrea Woelke* [2013] UKUT 0349 (LC), the case turned on the strictness with which contractual procedures for the recovery of service charges must be observed, and the degree of flexibility available to a landlord to deviate from those procedures either deliberately or inadvertently. The Deputy President of the Lands Chamber, Martin Roger QC, determined that the extent of a leaseholder's obligation to pay service charges depends upon the particular terms of the lease and service charge provisions should be interpreted and applied in a business-like way. An estimate serves a very important function in that it provides the lessee with advance warning of future contribution. In the event that service charge invoices did not comply with the Service Charge mechanism set down in the lease, it did not create liability on the part of the lessee to make the payment. [40]

48. HHJ Wilkinson agreed with *Woelke* in *Graham Peter Wrigley v Landchance Property Management Ltd* [2013] UKUT 0376 (LC) determining that as the separate insurance premiums had not been demanded in accordance with the provisions of the lease, they were not payable.

49. It follows therefore that as the service charges and buildings' insurance have not been demanded by the Respondent in accordance with the leases, they are not payable by the Applicants.

50. Following *Woelke* and *Wrigley*, the entitlement by the Respondent to prepare amended Service Charge Invoices for 2018 and 2019 in compliance with the lease (i.e., take a second bite of the cherry) turns on the provisions of the lease.

51. Unlike those cases referred to, paragraph 4.5 of Schedule 6, p29 of the Lease provides that the Service Charge certificate shall be "conclusive" as to the amount owing.

52. Where any Statutory Demand for monies incurred is deemed invalid, s20B of the 1985 Act applies in that where 18 months have passed between the time that the services were incurred, those costs then cannot be reclaimed by the Respondent: -
These include: -
- Buildings' Insurance for 2019 – effective date 1 April 2019 (£1,528.80)
- ESY Services Limited Invoice, dated 30 Jan 2019 (£70.32)
- Compliance Service 4 Property Management Invoice dated 2 April 2019 (£240.00)
- Management fee invoice dated 3 December 2018 – March-December 2018 – (£474.00)
- Auditing – (2018) and (2019)

53. The Service Charge Demand 2019 for the actual costs was backdated to 2nd December but only received on 10th July 2020 from the Respondent's solicitor as part of the enfranchisement process and following a Letter Before Action dated 8th July 2020. In support of their submission that the Demand was not

received until 10th July 2020, the Applicants referred to correspondence of various dates between 9th April 2020 and 27th May 2020 relating to the enfranchisement process, between Sherwood Solicitors, the Applicants' solicitors at the at time, and Greenwood & Co, the Respondent's solicitors, requesting a completion statement to include the Demand and Actual service Charge Accounts for year ending 31st December 2019. They also referred to a request that was made under section 21 of the Landlord and Tenant Act 1985 on 3rd June 2020

54. Regarding the Service Charges, these have never been requested as payable every six months and for service charge year 2019, the Applicants only received Actuals in July 2020, despite what is stated by the Respondent. Mr Hoye said he was obliged to request these directly by way of s.21 Notice under the Landlord and Tenant Act 1985 from the Respondent on 3 June 2020 as they had failed to materialise despite repeated requests from his enfranchisement solicitor, Sherwood & Co, who regarded them as essential to complete.

Respondent's Case

55. The Respondent said in reply that there is nothing in the lease that says the Landlord cannot demand the payment at the start of the year, but for the Leaseholder to pay this in 6 monthly instalments. The statement sent to the Leaseholder must indeed be for 12 months, albeit that the obligation on the Leaseholder is to pay this in 6 monthly instalments.

56. It was added that, in this case it is irrelevant, as the leaseholders have not bothered to pay at all for most years. It is only now that they are seeking to enfranchise that this issue has arisen.

57. All expenditure has been notified to the Applicants as required, and certainly within 18 months. As can be seen by the attached accounts, notice has always been sent to the Applicants in good time and within any time limits.

58. Notices were served for the insurance renewals as required and also for the substantial changes. In terms of recoverability under section 20B of the Landlord and Tenant Act 1985 this has been notified within 18 months and so is recoverable. The Demands have been sent correctly and the costs notified within any time limit.

59. The fact is that the costs have been notified within the required timeframe and are recoverable. The Demands are not incorrect and as such the amounts remain payable. In fact, it is contended that the Demand doesn't have to be valid for it to be a notification of an expense. The only requirement under section 20B is for there to be a notification of a charge and not a valid demand.

Decision re Payability

60. The Applicants submit that the Insurance Demands are not compliant with the terms of the Lease and as Paragraph 4.5 of Schedule 6 of the Lease

provides that the Service Charge certificate shall be "conclusive" as to the amount owing, the Respondent Landlord cannot re-issue the Demands or if they were incurred more than 18 months ago, they are not payable by virtue of section 20B of the Landlord and Tenant Act 1985 (the 1985 Act).

61. Demands may be defective for two main reasons. Firstly, because they are not compliant with legislation and, secondly, because they are not compliant with the Lease.

62. The legislative requirements are that a service charge demand must under section 47 of the Landlord and Tenant Act 1987 (the 1987 Act) state the name of the current Landlord, under section 48 of the 1987 Act must provide the Leaseholders with a correct address for service of notices and under section 21B of the Landlord and Tenant Act 1985 must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. If any of these requirements are not met than the demand is not payable until it is subsequently served in compliance with the legislation. The section 20B time limit does not apply to demands which are defective due to non-compliance with these requirements because the legislation itself provides the penalty, namely that they are not payable until served correctly.

63. Applying this to the present case the Tribunal looked at the Demands that had been served as referred to above. The Tribunal found that all the Demands provided for the Years in Issue complied with sections 47 and 48 of the 1987 Act and 21B of the 1985 Act.

64. The Tribunal then considered whether they were served in accordance with the Lease. A demand must be compliant with the lease or it will not be a valid demand. In *London Borough of Brent v Shulem B Association Ltd* [2011] EWHC 1663 (Ch) it was held that a demand that is initially not compliant with the Lease must be re-served in its correct form within 18 months of the costs being incurred as stated in secton 20B (1) of the Landlord and Tenant Act 1985, unless the Lease provides otherwise. For section 20B (2) to exempt the landlord from the effect of section 20B (1) the tenant must be notified in writing within 18 months that those costs had been incurred and that the tenant would subsequently be required under the terms of the lease to contribute to them by the payment of a service charge. Section 20B (2) only applies to costs incurred not to be incurred. This interpretation was confirmed In *Johnson v County Bideford Ltd* [2012] UKUT 457 (LC) the then President of the Upper Tribunal at paragraph [10] distinguished between a demand that was not statutorily compliant and one that was not contractually compliant with the Lease. The distinction is that sections 47 and 48 of the Landlord and Tenant Act 1987 and 21B of the Landlord and Tenant Act 1985 allow for retrospective correction. With regard to a lease, it depends on the terms of the lease whether retrospective correction is allowed. If the terms do not, then section 20B of the 1985 Act applies.

65. Applying this to the present case the Tribunal looked at the Lease. The Lease stated that under Schedule 4 the Tenant covenanted to pay a Service Charge and the Insurance Rent. Under Schedule 6 the Landlord covenants to serve a Notice on the Tenant providing specified information regarding the Insurance

Rent and to prepare and send an estimate of the Service Charge at the beginning of the year and a Certificate showing the actual costs at the end of the year. Although the two charges were identified separately in the Lease there was nothing in the Lease to preclude the Demands for the Insurance Rent and Service Charge being contained in the same document provided the Demands complied with the terms of the Lease.

66. The Applicant argued that Paragraph 4.5 of Schedule 6 of the Lease effectively does not permit retrospective correction of demands of the Service Charge, therefore section 20B does not apply in allowing the Respondent Landlord to serve a corrected notice within 18 months of the costs being incurred.

67. Firstly, the Tribunal found that the Paragraph specifically refers to Service Charges not Insurance Rent and therefore, if the Applicants were correct in the submission, a retrospective Demand could still be made for the Insurance Rent and section 20B does apply.

68. Secondly the Tribunal found that Paragraph 4.5 of Schedule 6 only makes the Service Charge Certificate conclusive as to the matters of fact i.e., the amount of the costs incurred. If a cost was omitted it could be included in the following year under the paragraph. However, apart from a manifest error the Certificate and any related Demand could not be re-issued with revised costs. The Respondent has not sought to serve a revised Certificate.

69. The Tribunal then compared the requirements of the Lease with the Demands actually served.

70. Firstly, the Tribunal looked at the Insurance Rent and found that the lease required that the Demand should include a notice which must state full particulars of the gross cost of the insurance premium after any discount or commission but including IPT, the date by which the gross premium is payable to the insurers and how it is calculated and the date on which it is payable.

71. The Insurance Demands for each of the Years in Issue only identified the cost as follows:

Estimate for 2018/2019	
Insurance March 18/19 & Brokers fee	£1,541.90
Actual for 2018/2019	
Insurance March 2018/2019 + Brokers fee	£1,541.90
Estimate for 2019/2020	
Insurance March 2019/2020	£1,619.00
Actual for 2019/2020	
Insurance March 2019/2020 + Brokers fee	£1,578.80
Estimate for 2020/2021	
Insurance March 2020/2021	£1,657.74

72. The Tribunal found that the Notices in the Demand for all the Years in Issue were not compliant with the Lease in that they only specified the gross premium including IPT and broker's fee. They did not state the date when the

premium was payable to the insurers or broker or how it is calculated. The broker's fee was also required to be stated separately, which it was not.

73. The Insurance Demands were therefore defective and are not payable until they are re-served and are subject to section 20B of the 1985 Act.

74. The Tribunal found that the Insurance for the period ending 31st March 2019 was incurred on 29th March 2018 and the defective Demand relating to the actual costs incurred for the year ending 31st December 2018 was made on 3rd December 2018. As it related to costs incurred, the Tribunal was of the opinion that the defective Demand amounted to a notification under section 20B (2) of the Landlord and Tenant Act 1985. Therefore, time under section 20B (1) ceased to run and the reasonable Insurance Rent would be payable when demanded in accordance with the Lease.

75. The Tribunal found that the Insurance premium for the year ending 31st March 2020 was incurred on 8th March 2019, when the Insurance Certificate was issued. In the knowledge and experience of the Tribunal an Insurance Certificate is not issued until the premium is paid. The defective Demand relating to the Actual Costs incurred for the year ending 31st March 2020 was dated 2nd December 2019, however, the Applicants stated that this was not received until 10th July 2020. The Tribunal, having examined the correspondence submitted in support, found that the Insurance Rent incurred on 8th March 2019, was not demanded until 10th July 2020. This demand was for costs incurred and so although it is defective, the Tribunal determined that it amounted to a notification in writing that those costs had been incurred and that the Applicant Tenants would subsequently be required under the terms of the lease to contribute to them by the payment of a service charge and so came within section 20B (2).

76. Therefore, under section 20B of the Landlord and Tenant Act 1985 the Insurance Rent would be payable.

77. Secondly, the Tribunal looked at the Service Charge and found that it is payable in two six monthly instalments. Whereas the total estimated amount should be stated on the Demand it must, in accordance with the Lease allow for payment to be made in two six monthly instalments. However, the Demands for each of the Years in Issue required payment in one single instalment contrary to the terms of the Lease.

78. The Demand for the Estimated Service Charge for the costs to be incurred for the year 23rd March 2018 to December 2018 dated 6th August 2018 was not compliant with the Lease for the above reason. A similarly defective Demand for the balance between the estimated and actual cost was served with the Actual Service Charge Accounts for the period 23rd March 2018 to 31st December 2018 dated 3rd December 2018. As it related to costs incurred the Tribunal was of the opinion that the defective Demand amounted to a notification within 18 months under section 20B (2) of the Landlord and Tenant Act 1985. Therefore, time under section 20B (1) ceased to run and the reasonable Insurance Rent would be payable when demanded in accordance with the Lease.

79. The Demand for the Estimated Service Charge for the costs to be incurred for the year 1st January 2019 to 31st December 2020 dated 3rd December 2018 was not compliant with the Lease as it required payment in one single instalment. A similarly defective Demand for the balance between the estimated and actual cost was served with the Actual Service Charge Accounts for the period 1st January 2019 to 31st December 2019, dated 2nd December 2018 but was found by the Tribunal to be served on 10th July 2020. Notwithstanding that the Demand was defective the Tribunal was of the opinion that it could still be a notification within 18 months under section 20B (2) in respect of those costs that were incurred less than 18 months prior to the defective Demand.

80. The Tribunal examined the invoices for the year ending 31st December 2019 to identify when the Service Charge costs were incurred and found all the costs were incurred after 10th January 2019 which is within 18 months of 10th July 2020 when the notification in the form of the defective Demand was served.

Apportionment

Applicant's Case

81. The Applicants stated that the Insurance Demand does not include an explanation as to why 50% of costs have been apportioned to each flat given that the neighbouring house has access rights through the Property's communal front door and the Deed of Easement requires the neighbouring house, 16a, to pay a fair and reasonable proportion of the costs of maintenance. The Applicants referred to the Definition of Tenant's Proportion at Clause 1.1 of the Lease which is 50% or such other percentage as the Landlord may notify the Tenant from time to time acting reasonably. Reference was made to the following cases.

82. In *Gater and others v Wellington Real Estate Limited* [2014] UKUT 561 LC, Deputy President, Martin Roger QC in paragraph 74 of his Determination concludes that "where the parties cannot agree what is fair, the consequence is that the fair proportion falls to be determined by the appropriate tribunal".

83. In *Fairman v Cinnamon (Plantation Wharf) Limited* [2018] UKUT 421 (LC); [2019] 1 WLUK 603 and *Williams v Aviva Investors Ground Rent* [2020] UKUT 111 (LC) it was established that whilst s27A(6) of the LTA 1985 rendered void any provision of a lease purporting to enable the re-calculation of a specified service charge, any provision of a lease than enables the variation of an apportionment where it is "necessary and equitable", or similar wording, is valid and a Tribunal may make such recalculation.

84. The Applicants referred the Tribunal to the Deed of Easement. The Applicants explained by reference to Plan 2 of the Deed of Easement that the freehold of Flats 16b and 16c registered at HM Land Registry under Title Number EX862016, included the building containing the two flats and the area around the building, referred to in the Lease as the Common Parts which were shown hatched on Plan 2. It was noted that the Common Parts comprise the external area around the Building, which included three parking, spaces one for each

flat and one for the house next door (these are marked on Plan 2). It also included the internal area within the Building which included the front entrance, and lobby off which on the one side was the front door to ground floor flat, 16b, and on the other side the front door to the neighbouring house, 16a. In addition, it included the stairs rising from the lobby to the first-floor landing off which is the front door to the first-floor flat, 16c.

85. As the Common Parts were part of the freehold to 16b and 16c the Deed of Easement was granted by the freeholder of 16b and 16c to the freeholder of the neighbouring house, 16a which is registered at HM Land Registry under Title Number EX842711. By the Deed of Easement, the freeholder of 16b and 16c grants to the freeholder of 16a, subject to the reserved rights set out in Schedule 3, the rights set out in Schedule 1. The rights in Schedule 1 include at paragraphs 1 – 5, in brief summary, the right of passage of utilities and service media for 16a through 16b and 16c, the right to enter 16b and 16c to repair and maintain 16a and its utilities and service media and rights of support for 16a.

86. It also grants:

    6. A right of way at all times on foot only over Accessway subject to the Grantee paying a fair and reasonable proportion of the costs of maintenance and repair of the said Accessway to the Grantor as soon as practicable following demand.

    7. A right to park one road worthy car or small van on the Parking Space at all times subject the Grantee paying a fair and reasonable proportion of the cost and for the maintenance and repair of the same to the Grantor as soon as practicable following demand.

87. The Accessway is defined at Clause 1.1 of the Deed of Easement as:
the route designated by the Grantor from time to time which passes over the Grantors Property between the Parking Space and the Adjoining Property.

88. The Adjoining Property is defined as:
the land shown hatched black on Plan 1.
This is the building containing the flats and the internal common parts.

89. The Applicants submitted that these paragraphs required the freeholder of 16a to pay a fair proportion of the cost of the insurance.

Respondent's Case

90. The Respondent's Representative said that the Managing Agents had been trying to ascertain the percentage split and the obligation of number 16a, to contribute, if at all. The insurance doesn't cover their premises. It could be argued that perhaps some of the charges should be split with them, but the Respondent's Representative said they could never ascertain this, despite asking the leaseholders, as can be seen in their own witness statements.

Decision re Apportionment

91. The Tribunal examined the Deed of Easement. It was not well drafted in that the Schedules were incorrectly referred to in the body of the Deed. These should read Schedule 1 – The Rights (as granted to the freeholder of 16a), Schedule 2 the Grantor's Covenants and Schedule 3 Reserved Rights (as reserved to the freeholder of 16b and 16c. In addition, use of the words "the route designated by the Grantor from time to time" in the definition of Accessway is insufficiently precise, although it is clear that the Grantee has the right to use the Common Parts as set out in paragraphs 6 and 7 of Schedule 1.

92. With regard to the reciprocal obligations on the Grantee to pay a fair and reasonable proportion of the costs of maintenance and repair to the Accessway and Car Parking Space in paragraph 6 and 7 respectively of Schedule 1, the Tribunal found that this did not include insuring either of these areas. When making any reservation the Grantor must be precise. The words "maintenance and repair" do not include "insuring" the Accessway or the Parking Space.

93. The Tribunal therefore finds that the freeholder of 16a is not obliged to contribute to the insurance of the Common Parts. The Tribunal determines that the Tenant's Proportion of the insurance is 50%.

Reasonableness of the Service Charge

Applicant's Case

Repairs

94. For the Service Charge year 2020, the Respondent included the sum of £1,500 under the heading 'Repair Fund (if needed)', when 'it cannot reasonably be considered necessary' (paragraph 1.1.1.6 of Part 2 of Schedule 7), given the imminent enfranchisement, given no repairs have been highlighted by any party and that no statutory works consultation notices have been served.

Keys

95. The Applicants said that two sets of keys for the Common Parts had been purchased and referred to three letters on pages 156 -7 of the Bundle in which keys were demanded. Mr Hoyle said that he had provided keys and yet a charge of £4.95 was made for keys in the 2018 Accounts of the Actual Costs.

Insurance

Validity of the Insurance

96. The Applicants doubted whether the Respondent notified the insurer of the Deed of Easement and the related third-party interest. The Applicants said that there is no evidence that the Respondent complied with paragraph 1.1.1.3 of Part 2 of Schedule 7 of the Lease to inform the insurers of the Deed of Easement benefitting the house next door or that it complied with the

recommendations or requirements of the insurer in respect of this information. Therefore, the policies taken out may not take account of the use of shared common parts with the house next door. As a result, the Insurance may not be valid. It was submitted that if the insurance is not valid then there was no obligation upon the Applicants to pay the premium. The Tribunal was referred to those insurance documents that had been provided.

Reasonableness of Insurance Premium

97. In addition, the Applicants submitted that the cost of the Buildings' Insurance does not represent 'value for money' and 'on reasonable terms' as required by Paragraph 2.1 of Schedule 6 of the Lease, in that the Property Owners Liability is too high at £10 million for Service Charge Years 2018 and 2019 when it should reasonably have been between £2 and £5 million.

98. The Applicants do not own a property portfolio and are not entitled to any discounts and yet were able to obtain 'like for like' quotes for Buildings Insurance in 2019 for £856.11 (inc IPT) and in 2020 for £569.58 (inc IPT) (197).

99. The alternative Buildings' Insurance quotes obtained are:
    1. Pen Underwriting (cost: £856.11), for the period between 22 March 2019 - 21 March 2020 is a standard Buildings' Insurance. The excesses are stated to be £500.00 for escape of water from a tank, apparatus or pipe, £250.00 for property damage and £1,000 for subsidence, heave or landslip. There is only a requirement for a roof inspection every two years where there is a flat roof. The requirement to carry out an inspection of the premises every 14 days only applies where both flats become uninhabited, untenanted or not actively used for more than 30 consecutive days (P171: Unoccupancy Condition).
    2. Adler Insurance (cost: £569.00), obtained via a broker, and refers to a policy from Ageas for the period of 1 November 2020-31 October 2021. The excess is stated on page 5 of the Schedule as £100.00 for third party property damage, third party injury and subsidence. There is no requirement for a roof inspection and the other clauses appear as standard.

100. The Applicants said that, in contrast, despite Tribunal Directions, the Respondent has not disclosed its full policy wording, documentation or the Schedule for two of the three insurance policies, the premiums for which were as follows:
Axa Buildings' Insurance for service charge year 2018 (23 March 2018-31 March 2019), costing £1,491.90
Axa Buildings' insurance for service charge year 2019 (1 April 2019 – 31 March 2020), costing £1,528.80
These premiums are £635.79 and £672.69 respectively, more than the Applicant's Pen quote and yet it is presumed from the Certificates that the policies are on similar terms.

101. For the third policy for the period between 1 April 2020 – 31 March 2021, the Respondent did not provide a Buildings' Insurance Certificate or Schedule.

Although a Lockton All Risks Policy document and an Arch Insurance Policy was received by the Applicants neither of them appeared to relate to the Property.

102. The Applicants stated that in *Cos Services Limited v Nicholson & Willans* [2017] UKUT 382 (LC), there was an attempt to resolve the tensions caused by the decision of *Forcelux Limited and Avon Estates (London) Ltd v Sinclair Garden Investments* (Kensington) Ltd [2013] UKUT 0265 (LC) in assessing the reasonableness of building's insurance by identifying a two-stage test to be applied.

103. First, the decision to incur cost must be a rational one, but secondly the sum charged must be, in all the circumstances, a reasonable charge. It is agreed that the landlord need not choose the cheapest cover. However, the Tribunal in assessing reasonableness will assess: the terms of the lease and liabilities to be insured, the landlord's explanation of the process in selecting a policy and the steps taken to assess the current market and whether any comparable cheaper policy is genuinely comparable by reference to its terms.

104. In the event the Tribunal were to decide that insurance is payable for 2019 and 2020, the Applicants submitted that a reasonable sum to pay would be as per the Applicants' policies.

Lack of Disclosure of Insurance related Information

105. Furthermore, whilst it is agreed that generally the engagement of a broker should bring about a lower cost of insurance, in this case it had the opposite effect. The sole broker used by the Respondent, Kruskal Insurance Limited, also runs the business from the family home as does the Respondent who operates from a house a short walk away. The two families are considered to have community and friendship ties, which within the definition of Court of Appeal case *No. 3. Edmonds v Lawson* [2000] QB 501, means that the parties do not deal 'at arm's length'. Policies obtained from Axa by this broker are considerably more expensive than a layperson going direct to the market on a 'like for like' basis without kick-backs such as the commission or discounts available to the Respondent.

106. The Respondent did not disclose or pass on any discount it obtained from AXA Insurance and in 2020, Arch Insurance, for placing its considerable property portfolio with them. Given the size of the portfolio, it was submitted that the discount would have been at least 20% on each policy. Confirmation from the Respondent was required on this and any discounts in writing from the Insurers directly. For every relevant year, insurance documentation was incomplete in that it did not contain Certificate, Schedule, full policy wording and details such as commission, discount and no-claims bonus.

Reinstatement Value Assessment

107. The Applicants stated that for the service charge year 2019, there was no inclusion in the Estimate for the cost of assessing the Reinstatement Cost of

Buildings' Insurance as defined in Clause 1 Interpretation of the Lease therefore it was submitted that this was not payable.

108. The Applicants said that they were only contacted in December 2019 with regards a date for the Reassessment. Mr Toli Moskovitz, of JMC Chartered Surveyors in Manchester (220 miles away from the property) was instructed. He did not enter the flats when carrying out an assessment (on 31 Dec 2019) and is not a RICS registered surveyor. The Applicants said that they did not receive the report and there was nothing to justify the sum paid. The free professional tool, RICS Buildings' Insurance calculator would have been adequate.

109. The Applicants said they did not consider the reassessment necessary and was not due to be revised until April 2020. According to the ARMA (the Association of Residential Managing Agents) website: -
"...it is generally considered reasonable to commission a full reinstatement valuation every 10 years with intermediate desk top re-assessments every three years, subject of course to there being no material changes to the building. Such assessments being provided by qualified surveyors/valuers".

110. They said it was not reasonable to expect the Applicants to pay for an item that was not anticipated in advance, prepared by someone who is not RICS registered and then never received.

Planned Preventative Maintenance Schedule, Fire Risk & Health & Safety Assessments & Electrical Certificates

111. The Applicants said that they were not provided with either of the Fire Risk and Health and Safety Assessments by 4site Consulting Limited, the Electrical Certificates, Reinstatement Value Report or the Planned Preventative Maintenance Schedule. The Applicant did not consider the annual Fire Risk and Health and Safety Assessments or the Reinstatement Value Report or the Planned Preventative Maintenance Schedule necessary. The latter costing £558.00.

112. Furthermore, a yearly inspection is not necessary even for small blocks of flats. Pursuant to para 40.6 of the Government's publication, Fire Safety in Purpose-Built Blocks of Flats, a purpose-built block of four floors should have a new risk assessment completed every four years, and a review every two years would be sufficient. Only in extreme cases would an annual fire risk assessment be appropriate. Arguably here, a building of only one storey might reasonably require a new risk assessment every 6 years with a review every four years. In any event, a Fire Risk Safety Assessment is offered free of charge to Essex Residents by the Essex Fire Service. Contrary to the Regulatory Reform (Fire Safety) Order 2005 no copy of the report was provided to the Tenants.

Window Cleaning

113. Window cleaning was not reasonably required (refer to in 2019 and 2020 and not reasonably carried out (see Witness Statement of Nicky Fox). ESY Services

Limited who undertook the work is based in N3 2BS, approximately 25 miles from the property, which is too far away to be cost-effective. The Applicants were not notified of the visits and consequently 'conditions for access' in accordance with 1.1 Interpretations of Lease. The Applicants already has an arrangement in place for the top windows of her flat to be cleaned by a local cleaner.

114. The photographs supplied with the Respondent's submissions pursuant to Tribunal Directions dated 18.8.20 show the cleaner cleaning the windows of the house next door, which the Applicants should not have to pay for.

Management

115. The Respondent provided sub-standard management of the property via connected company, Eagerstates Limited. They failed to notify the applicants of visits to the property by third parties under the terms of the lease, letting themselves in without notice and authorising others to do the same.

116. Applicants considered the management costs should be reduced because of the interconnected relationship between Respondent and Agent who share the same office, use the same computer and residential address to carry out the work, with no commercial overheads.

117. The Applicants stated that the Respondent and its Agent failed to comply with RICS Service Charge Residential Management Code – 3rd Edition, effective from 1 June 2016 and highlighted a number of provisions in the Code. Referring to issues already mentioned and to the lack of communication, information, consultation by the Respondent.

118. The Applicants have been de facto managing the repairs, window cleaning, cleaning of common parts etc themselves since they purchased the property, with freeholders dealing with the Insurance. The Applicants produced invoices for cleaning the carpets dated 18th August 2019, adjusting the front door dated July 2018 and clearing the guttering dated 18th June and 10th December 2019.

119. The Applicants submitted that Management consists of an autocratic sending of template demands without proper contemplation of what is actually required or review of lease provisions. No reports or assessments have been received to evidence the work undertaken and any service charge documentation provided (other than demands) has only been reluctantly sent as a result of a solicitor's request during enfranchisement proceedings, not for day-to-day management of the property.

Auditing Costs

120. The Applicants submitted that the auditing costs were not 'reasonably or properly incurred' by the Respondent's own accountant, Martin Heller. There is no contractual obligation under the lease under paragraphs 1.12 and 1.1.2.2 of Part 2 Schedule 7 to have this undertaken and no statutory requirement exists where there are only two flats. Just because something is contemplated

in a lease does not automatically make it reasonable to incur cost for that item *Veena SA v Cheong* [200] 1EGLR 175. In this case, the limited number of transactions in every relevant year would not give rise to a presumption that an audit was reasonably necessary or required. Instead, convening a meeting with the Applicants to discuss costs incurred and management of the property going forward would have been the more reasonable approach.

Estimates

121. Estimates generally and for 2020 in particular failed to properly request 'a fair and reasonable proportion' of the costs of maintenance/upkeep payments for accessing the common parts of the Applicants property, pursuant to Deed of Easement, and by doing so, failed to properly assess the level of Service Charges reasonably payable by the Applicants in every Service Charge year.

122. The current service charge year includes an excessive estimate for unnecessary and unreasonable items such as a further Fire Health & Safety service of £250.00 added to benefit the Respondents directly, a repair fund of £1,500 (without envisaging any repairs), a drains service when the drains are not blocked and window cleaning when the windows are not dirty.

General

123. Reference was made to *Yorkbrook Investment Ltd v Batten* (1985) 18 HLR 25 which has been questioned by Court of Appeal decision in *Bluestorm Ltd v Portvale Holdings plc* [2004] EWCA Civ 289. The issue of condition precedent was set within Para 36 of this decision: -

"36. If the point had to be decided by this court – and I have indicated it does not – I would not think that we were constrained to come to the same conclusion in respect of this lease and this dispute as did the court in *Yorkbrook*. First, it must be said that the instrument, although similar, is in fact different; so, in any event what the Court of Appeal said about a different instrument does not bind us, though of course its view must be taken with the greatest respect. Second, the Court of Appeal in *Yorkbrook* stressed, with respect rightly, that the words must be interpreted in the context of the particular lease and of the assumed intention of the parties in entering into it. The lease in *Yorkbrook*, although similar to our lease did, not as clearly as does the present lease create a close linkage between the tenants and their payments on the one hand and the landlord and his responsibilities on the other, as I have set out above. In the context of a lease such as ours, and the scheme in which it forms part, it would be entirely understandable that the words in brackets were intended at least to carry some meaning. The landlord depends entirely for his ability to run the building on contributions from the tenants, and that is what the lease provides for".

124. The Applicants submit that if they stop paying for certain services then those services should not be provided by the Respondent.

Respondent's Case

125. The Respondent responded to the comments raised by the Applicants as follows:

Insurance

126. The Respondent's Representative said that the alternative policies obtained by the Applicants are not on a like for like basis. The Applicant's policies include higher excesses, require the roof to be inspected every 2 years, require an inspection of any vacant premises every 14 days and other conditions which are impossible for the freeholder to do and as such are not reasonable terms. The Respondent Landlord's policy does cover all of these as well as noting the interest of all those who have an interest in the building.

127. In addition, the Respondent's Representative provided a letter for the Broker, Kruskal Insurance Brokers which stated that it acted as Insurance Brokers in respect of the buildings insurance and that the portfolio is currently insured with AXA Insurance. Each on renewal said they reviewed the market to ensure that the rates being charged remained competitive taking into account the requirements that the policy must be on a full All Risks basis including Subsidence and also that the policy must cover any type of tenant, including DSS, asylum seekers, students and other nonstandard tenants.

128. The type of policy which is covering this portfolio is only available from a limited number of insurance companies and they would normally charge a higher rate in view of the extended cover provided. However, it has been possible to achieve a lower rate by insuring the property as part of a large portfolio on a block policy.

129. In answer to the Tribunal's questions at the Hearing the Respondent's Representative said that no commission or discount was received by the Respondent.

130. With regard to the issue as to whether the Respondent or its Managing Agent had informed the insurer that the access was shared and that this was a material fact the Respondent's Representative said that the Broker was aware of the situation. However, notwithstanding questions from both the Applicant and the Tribunal the Respondent's Representative was not able to indicate any correspondence within the Bundle providing either reassurance or any other documentary evidence that this was the case.

Reinstatement Valuation of the Building & Planned Preventative Maintenance Schedule

131. The Respondent's Representative said with regard to the Building Reinstatement Valuation for the Insurance and the Planned Preventative Maintenance Schedule, this was carried out by JM Cope which are a firm of chartered surveyors registered by RICS and a RICS registered surveyor signs the report. Mr Toli Moskowitz is a chartered surveyor himself. The firm has no affiliation at all to this Managing Agent or the Respondent freeholder and are

completely independent. There is no requirement to provide the Reinstatement Valuation of the Building, Planned Preventative Maintenance Schedule, Fire Risk & Health & Safety Assessments & Electrical Certificates reports with the accounts. Letters were sent out after the Fire Risk Assessment and copies of the Report were available on request.

132. The Respondent's Representative added that the Respondent was carrying out a programme of valuation of all its properties. As far as the ARMA recommendation was concerned the valuation for this Building had merely been brought forward a year.

Fire Risk & Health & Safety Assessments & Electrical Certificates

133. There is no requirement to provide the Fire Risk & Health & Safety Assessments & Electrical Certificates reports with the accounts. Letters were sent out after the Fire Risk Assessment and copies of the Report were available on request.

Window Cleaning & Other Contractors

134. All contractors have had their prices checked and carry out work for our firm across the country, with no additional travel costs incurred for this.

Management

135. The Respondent's Representative said that there is no conflict of interest with the management agents. The Managing Agents are a bona fide company who manage properties for various landlords. The ruling in *Skilleter v Charles* is quite clear that a sham must be shown to disprove the managing agents' fees in such a situation, and there is no evidence here of a sham. The Managing Agents, Eagerstate Limited, provided a contract of engagement between them and the Respondent, Assethold Limited. The Respondent's Representative said that in any event under the Lease the Respondent is entitled to be paid for management that it undertakes itself.

136. There is no obligation to provide advance notice of attendance to the communal areas of the property.

137. There is no obligation to comply with the RICS code and the Respondent's Representative said they had dealt with the leaseholders reasonably. It is the leaseholders who have failed to make payments for service charges, and would continue to do so had they not wished to now acquire the freehold of the property.

Auditing

138. Martin & Heller are a firm of accountants that deal with thousands of clients and there is no conflict of interest.

Generally

139. The Respondent's Representative submitted that all costs have been reasonably incurred and no evidence has been provided to show that any expenditure itself is unreasonable. They said they cannot comment on any previous arrangement but both themselves and the Respondent freeholder have always complied with the terms of the lease. They said that they considered that they had been more than reasonable in funding the expenditure at the property for the leaseholders who have failed to pay the service charges, and not calculated interest to date. This includes non-payment of ground rent too, which could lead to forfeiture. This matter has only arisen because of the fact that the leaseholder's wish to enfranchise. Any deficit in the service charge account created, if they should be contributing, will simply create a debit on the service charge account which will be payable by the leaseholders on completion of the enfranchisement which they would then need to recover when they enfranchise so this doesn't materially affect them in terms of the amounts due on the account. They have had notification of the expenses and these are payable under the terms of the lease.

Decision Re Reasonableness of Service Charge

140. The Tribunal considered all the evidence and submissions made by the parties. It based its determination upon the actual costs incurred for the years ending 31st December 2018 and 2019 because the Accounts for the Actual costs were available. Although, only the Estimated or anticipated costs for the year ending 31st December 2020 had been produced by the Respondent and the Account for the Actual costs had not yet been prepared nevertheless the invoices for that year had been provided and therefore the tribunal based its determination upon those.

Repairs

141. The Tribunal found that there was no charge for repairs for the years ending 31st December 2018 and 2019 therefore no determination is required. The Respondent included a sum of £1,500.00 in the Estimated Service Charge for the year ending 31st December 2020. The Tribunal finds that notwithstanding that the Account for the Actual Service Charge costs is not yet available, all the relevant invoices have been provided. No repair costs have been incurred for the year ending 31st December 2020, therefore no determination is required.

Keys

142. The Tribunal considered it the responsibility of the previous Landlords to provide the relevant keys e.g., to the Common Parts, to the succeeding Landlords. It is not for the Leaseholders to provide them or to be charged for copies of them for the Managing Agents.

143. As the Managing Agents said in their letter, the keys are for the Landlord and its Managing Agent to carry out their duties and the onus is on them. The charge of £4.95 for keys in the 2018 accounts is therefore not allowed.

Insurance

Validity of the Insurance

144. The Applicants stated that the Respondent had failed to notify the insurer of the Deed of Easement which enabled the occupiers of the house next door at 16a to pass and repass through the entrance lobby. The insurer therefore would not know about the use of shared common parts and as a result the Insurance would not be valid. It was submitted that if the insurance is not valid then there was no obligation upon the Applicants to pay the premium. With regard to paragraph 1.1.1.3 of Part 2 of Schedule 7 of the Lease this does not require the Respondent to make declarations to the insurers but to carry out any requirements that the insurers stipulate.

145. The Tribunal examined the insurance documents that had been provided.

146. The AXA Certificate of Insurance for the period 23rd March 2018 to 31st March 2019 and the AXA Certificate of Insurance for the period 1st April 2019 to 31st March 2020 only referred to: "Risk Address: 16 St Johns Road, Epping, CM16 5DN" and "Occupancy: Occupied – Two Flats". Under the Clauses Section it was stated that the "Interest of Lessees and Mortgagees automatically noted". There was no mention in the description of the property or the clauses of the shared access to the adjacent house at 16a which gave the impression that the two flats were a self-contained unit. Under Important Information it stated "You have a duty to make a fair presentation of the risk. To meet this duty and to ensure that a claim is not repudiated or reduced you need to disclose all material information to insurers which is known to you or ought to be known to you. Examples of material information include a premises become vacant or alterations in structure or occupancy".

147. The Arch Insurance Schedule for the period 1st April 2020 to 31st March 2021 stated the insured Premises are "2 Flats". Interested Parties are "The interest of any freeholder, mortgagee, lessor heritable creditor "Primo Loco" or "Secundo Loco" or similar party is noted." These are persons with a financial interest in the proceeds of the insurance not persons who may affect the risk. The shared entrance has an effect on the risk.

148. The Tribunal is of the opinion that a failure to inform the insurer of the shared access which is part of the Retained Parts is material information which ought to be known by the Respondent and which could lead to a claim being repudiated or reduced. With regard to the AXA Insurance and the Arch Insurance the Insurer would have referred to the shared access under Premises and/or Occupancy on the AXA Insurance Certificate or on the Arch Insurance Schedule. The Applicants have since 2018 raised the point with the Managing Agent and had asked for confirmation that the insurer was in fact aware of the shared access. In the face of this the Tribunal considered that the Respondent or its Managing Agent should have obtained confirmation that the insurers were aware of the shared access and this should have been evidenced in correspondence or some other document.

149. The Tribunal finds that the Respondent has omitted to inform the insurers of a material fact of which the Applicant made the Respondent aware which is likely to cause the insurance to be repudiated or reduced. The Tribunal therefore determines the insurance premiums to be unreasonable and not payable.

Reasonableness of Insurance Premium

150. The Applicants submitted that the cost of the Buildings' Insurance does not represent "value for money" and "on reasonable terms" as required by Paragraph 2.1 of Schedule 6 of the Lease. It was evident to the Tribunal that the Respondent insured its portfolio under a block policy.

151. In considering the insurance premiums charged the Tribunal noted past case law including that which it had been referred to by the parties.

152. An insurance policy must be compliant with the Lease. In obtaining insurance the landlord does not have to obtain the cheapest premium but it must be a premium that is representative of the market rate or that it has been negotiated at arms' length in the market place (*Havenridge Limted v Boston Dyers Limited* [1994] 49 EG 111 *& Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50)

153. A commercial landlord with a very substantial portfolio, may negotiate a 'block policy' for all the Landlord's holdings rather than negotiating individual policies property by property as there are advantages of practicality for the Landlord and more comprehensive cover for the Tenant *(Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173). However, so far as the apportionment between individual properties and their tenants within the portfolio is concerned, the policy should not mean that the premium is apportioned in such a way that tenants of high-risk properties pay less and tenants of low-risk properties pay more than if the premium were apportioned to take account of the relative risk of the respective properties. In other words, the Applicants should pay a premium that reflects the risk related to the Property.

154. In making the determination whether the premium was "reasonably incurred" two questions are to be addressed. First, whether the Landlord's actions were appropriate i.e., whether the proper procedure had been followed as mentioned above. Second, whether the amount charged was reasonable considering the evidence in answering the first question. This latter question is "particularly important" because otherwise "it would be open to any landlord to plead justification for any particular figure…without properly testing the market".

155. There are two tests, firstly a landlord must show that its decision-making process is rational and secondly that the outcome is reasonable *(Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC) & *Waaler v Houslow LBC* [2017] EWCA Civ 45)

156. The onus is on the landlord to show that a block policy has been negotiated at arms' length in the market place following a rational procedure, is appropriately

apportioned and produces a reasonable outcome for the individual property insured.

157. The Applicants submitted that the Respondent, its Managing Agent and its Broker were related and therefore the lack of this independence meant that the insurance was not placed at arm's length. The Tribunal finds this to be a misunderstanding of where the independence must lie. Whether the landlord or its broker places the insurance, the independence must be between them on the one hand and the insurance companies in the market place on the other. However, that independence may be compromised by the offer of commissions to either landlord or broker by the insurance companies which is why it is important that commissions are declared.

158. The Tribunal considered whether the Respondent's process of placing insurance was rational. It noted the statement from the Broker, Kruskal Insurance Brokers, obtained by the Managing Agent. The Tribunal found this to be a standard form letter. The obtaining of the policy focused on the variety of properties within the portfolio and that they were sublet to a range of tenants. No details were given as to whether properties were inspected or whether claims histories, the age of buildings and other factors were taken into account, which would affect the apportionment of the total amount attributed to an individual property within the block policy. Also, no information was provided with regard to the commission received by the Broker. The Respondent's Representative said that the Respondent did not receive a commission. A Broker is entitled to reasonable remuneration for placing insurance but it is unlikely that the Broker only received £50.00 for doing so therefore a commission will have been received from the insurance company as well.

159. The Respondent's Representative said that the Applicant's policies were not like for like including higher excesses and inspections. The Applicants state they were and questioned the process in that the requirements of the Respondent were unreasonable, particularly that the Property Owners Liability is too high at £10 million for Service Charge Years 2018 and 2019 when it should reasonably have been between £2 and £5 million.

160. The Tribunal was satisfied that the policies obtained by the Applicants complied with the Lease and that on the information that was provided the Respondent's and the Applicants' policies were like for like.

161. Taking all this into account the Tribunal noted the difference between the premiums and quotations obtained as follows:
Axa Buildings' Insurance for 23rd March 2018 to 31st March 2019, costing £1,491.90;
Axa Buildings' insurance for 1st April 2019 to 31st March 2020, costing £1,528.80;
Arch Building Insurance for 1st April 2020 to 31st March 2021, costing £1,657.74;
Pen Underwriting Buildings' Insurance for 22nd March 2019 to 21st March 2020, costing £856.11;

Adler Insurance (Ageus) Buildings' Insurance for 1st November 2020 to 31st October 2021, costing £856.11.

162. The Respondent's Representative did not adduce any evidence as to why there was such a difference between the premiums obtained by the Respondent and the quotations provided by the Applicants. The evidence sought by the Tribunal includes a statement of what the Respondent's instructions are to its Broker in respect of distinguishing properties within the portfolio, a list of the insurance companies approached by the Broker in its review of the market and their respective responses and premiums, an account of the cover that can be obtained and any advantages afforded by the Broker such as claim handling and a comparison between the higher cost cover and the alternative quotations, identifying how the higher cost cover was justified. The Tribunal found that the premium obtained for the Building through the block policy was significantly higher than the alternative policies. Whereas the block policy may be advantageous to the Respondent no evidence was adduced to show how it provided the "fair and reasonable terms that represent value for money" as required by Paragraph 2.1 of Schedule 6 of the Lease.

163. The Tribunal found that Pen Underwriting Buildings' Insurance for 22nd March 2019 to 21st March 2020 at a cost of £856.11 provided appropriate cover. The Tribunal considered that the premium would be a little less in 2018 and a little more in 2020, however the sum of £856.11 was a reasonable average for each of the Years in Issue.

164. Taking into account that on the balance of probabilities the Broker received a commission for placing the insurance the Tribunal determined that in the absence of any explanation for the Broker's Fee as an additional charge, the Tribunal determines that it is not reasonably incurred.

Reinstatement Value Assessment

165. The Applicants said the Reinstatement Valuation had not been included in the Estimated Service Charge and it was not reasonable to expect the Applicants to pay for an item that was not anticipated in advance. The Tribunal noted paragraph 4.5 of Schedule 6 which specifically allowed a charge incurred in one year to be added to the next year. The Valuation Fee, although omitted from the estimate for 2019 could be added to the 2020 Service Charge. The Tribunal found that its omission did not relieve the Applicants of their liability to pay it. The Valuation was only a year earlier than scheduled.

166. It is not a requirement that the Valuation itself must be undertaken by a chartered surveyor. The Valuation was undertaken by a member of a company of chartered surveyors which will be regulated and all its members professionally insured.

167. In the knowledge and experience of the Tribunal the charge of £990.00 is on the high side but not unreasonable. The Tribunal therefore determines the charge to be reasonable.

168. The original of the report should be passed to the Applicants on enfranchisement as they have paid for it and can present it to an insurance company if required.

Fire Risk & Health & Safety Assessments & Electrical Certificates

169. The Applicants said that annual Fire Risk Assessments were not required. The Respondent's Representative said that they had been advised by the fire service that they were.

170. The Tribunal is of the opinion that each case should be taken on its particular circumstances. This is a relatively new block of just two flats on two storeys. With regard to the Health Safety and Fire Risk Report dated 26th March 2019 provided the only matter of concern related to the recipients of the report ensuring that the doors to the flats met the minimum half hour standard of fire resistance. The responsibility for this rests with the Landlord and Leaseholders. Regular inspections should be undertaken by the competent person under the Regulatory Reform (Fire Safety) Order 2005 to ensure that unauthorised items are not stored in common parts including plant rooms. There is little point in having full assessments which merely pick up these points. The responsibility rests with the competent person with action taking place on an ongoing basis.

171. In the absence of any change in the Building over the next three to four years the Tribunal saw no reason for there to be an assessment every year. The Tribunal therefore determined that the Health Safety and Fire Risk Report dated 26th March 2019 at a cost of £240.00 was reasonable.

172. The Tribunal found that the Health Safety and Fire Risk Report dated 29th July 2020 was unnecessary and so determined the charge of £300.00 to be unreasonable.

173. The original of the report should be passed to the Applicants on enfranchisement as they have paid for it.

174. The Applicants questioned what the Fire Health and Safety Service was. It is apparent from the invoices from Essential Safety Products Limited that this relates to the emergency lights and smoke detectors in the Common Parts. The Emergency Lighting Test requires the power to all the main lights to be switched off. The Emergency Lights must then stay on for at least 3 hours. The person carrying out the test must be present for the whole three hours of the test and must log all the Emergency Lights that do not illuminate at all or for the full three hours. An electrician will then isolate the supply and replace the lights that have failed the test and re-test them. The Tribunal determined that the Fire Health and Safety Service to be necessary and reasonable for each of the years at a cost of £246.00 for 2018 and 2019 and £250.00 for 2020.

Planned Preventative Maintenance Schedule

175. The Tribunal found that the compilation of Planned Preventative Maintenance Schedules for the Respondent's portfolio was driven by its central bureaucracy

rather than need on a case-by-case basis, which would be the correct approach for such a large and varied portfolio. In addition, from its knowledge and experience, the Schedule fell far short of a reasonable standard lacking costings or reserve assessments and was in a format that could have been carried out by a managing agent in the course of their standard duties. The Tribunal therefore determined the charge of £558.00 unreasonable.

Window Cleaning

176. Although the Tribunal accepted Ms Fox's evidence that during 2019 she cleaned the windows, nevertheless, the account presented for payment in the Service Charge year for 2019 is for a clean in 2018 at a cost of £70.32. There was also evidence by way of an invoice and photographs that a clean took place in 2020 at a cost of £105.60. However, from the photographs of window cleaning taking place in 2020 the contractor cleaned all the windows of 16 St John's Road. There appear to be the same number of windows each side therefore the Tribunal determined it reasonable that the cost should be divided in half between 16a and 16b and c. The cost to the Applicants should therefore be £35.16 for 2019 and £52.80 for 2020. There was no evidence of alternative quotations.

Management

177. The Applicants submitted that there should be a reduction in the Service Charge because the Managing Agent, Eagerstates Limited, is an interconnected company with the Respondent. The Tribunal see no justification for making a reduction for that reason alone. No evidence has been adduced to show that charges being made which are more expensive because they are being carried out by the Managing Agent than if they were carried out by the Respondent Landlord. The Respondent is entitled to make a charge for management if it carries out the task itself under Paragraph 1.1.2.1. of Part 2 of schedule 7 of the Lease.

178. The Applicants stated the Managing Agents failed to notify the Applicants of visits to the property by third parties under the terms of the lease, letting themselves in without notice and authorising others to do the same.

179. The Applicants said that the Managing Agent had failed to comply with RICS Service Charge Residential Management Code – 3rd Edition, effective from 1 June 2016 and listed a number of items of the Code with which the Applicants said the Respondent had failed to comply.

180. The Tribunal noted that the Applicants had been managing the cleaning of the common parts since they purchased the leasehold interest of their flats in 2015.

181. The Tribunal found that communication by e mail alone was restrictive and responding to the Applicants' concerns and providing information was poor. For example, there are only two flats and yet the Health and Safety and Fire Risk Assessment was not provided although it raised a point regarding the fire resistance of the front doors which should have been addressed. In addition, it

is cold comfort that an insurance premium is not payable if the property is not properly insured. As stated above, the evidence shows that on the balance of probabilities the insurer is unaware of the material fact that there is a shared access. There was a failure to notify the Applicants of visits to the property by the Valuers and Assessors as required under the Lease. The Applicants were also not informed of inspections by the Managing Agent which might have been a good opportunity to discuss any issues and consult with the Tenant Applicants.

182. In addition, the production of invoices for cleaning the carpets, adjusting the front door and clearing the guttering showed that the Tenants had taken a significant part in ensuring that the Building was maintained.

183. Taking into account the failings in management, the size of the Building, the number of Flats, the involvement of the Tenants in maintaining the Building, and the failure to comply with the RICS Code, the Tribunal considered a Management fee charged for all for all the Years in Issue to be reasonable. As the Applicants had themselves effectively managed the building the amount allowed for the managing agents fees are reduced to £120 + VAT (£60.00 per unit) for each year.

Auditing Costs

184. The Tribunal found that the Respondent is entitled by virtue of paragraphs 1.12 and 1.1.2.2 of Part 2 Schedule 7 to have the accounts audited. The production of reliable accounts is important to both landlords and their agents as well as tenants, which may be needed for tax purposes. Unlike in *Veena SA v Cheong* [2000] EGLR 175 they are not a luxury item such as porterage. However, the Tribunal determined that the charge of £150.00 for each of the years was reasonable. In the knowledge and experience of the Tribunal the number of transactions did not justify an annual increase for the years in issue.

Estimates

185. As stated above, although, only the estimated or anticipated costs for the year ending 31st December 2020 had been produced by the Respondent and the Account for the Actual costs had not yet been prepared, nevertheless the invoices for that year had been provided and therefore the Tribunal based its determination upon those.

Generally

186. The Applicants had argued generally with reference to *Yorkbrook Investment Ltd v Batten* (1985) 18 HLR 25 and *Bluestorm Ltd v Portvale Holdings plc* [2004] EWCA Civ 289 that depending on the terms of the Lease if Leaseholders chose to cease to pay for services, then they should not be provided. The Applicants referred to Paragraph 4.1 of Schedule 6 of the Lease.

187. In *Yorkbrook* it was considered whether the payment of a service charge was a condition precedent to the provision of services. It was held that it was not,

and that the general principle was expressed in Foa's General Law of Landlord and Tenant:

"The question whether liability in respect of one covenant in a lease is contingent or not upon the performance of another is to be decided, not upon technical words, nor upon the relative position of a covenants in the case, but upon the intentions of the parties to be gathered from the whole instrument".

188. The Tribunal finds that, as was argued in *Bluestorm* that to do so would have unintended consequences if that were the principle. In *Bluestorm* Buxton LJ stated *obiter dicta* that it depended on, in this case, the wording of the Lease and the extent to which that reflects the intentions of the parties. The Tribunal is of the opinion that so as not to derogate the obligations of the Landlord as a whole, paragraph 4.1. may be applied in such a way as to relieve the landlord of particular obligations by the Tenants agreeing that if they did not pay for the Service the Landlord would not provide it. In this case that has been done. On page 137 of the Bundle the previous Estimated Service Charge Account was provided for the year 1st January 2016 to 31st December 2016 at the foot of which it was stated that "Cleaning of communal hallway, stairs and gardening had been removed as discussed with Miss n Fox form 16c St Johns Road. These items will now be carried out by the tenants of 16b and 16c as agreed to reduce service charges."

189. The Tribunal is of the opinion that such agreement is required to reduce the risk of works not being carried out to the detriment of either parties' investment in the property.

Determination

190. The Tribunal determines the Service Charge for the years in issue payable by the Applicants to the Respondent when properly demanded as follows:

Year ending 31st December	**2018**	**2019**	**2020**
Heads of Expenditure	**£**	**£**	**£**
Insurance	0	0	0
Insurance Valuation	-	-	990.00
Window Cleaning		35.16	52.80
Fire Health & Safety Risk Assessment	-	240.00	0
Common Parts Electricity	0	-	-
Key cutting	0	-	-
Fire Health & Safety Service	246.00	246.00	250.00
Accountant's Fee	150.00	150.00	150.00
Management Fee	144.00	144.00	144.00
Total	540.00	815.16	1,586.80
Apportionment @ 50%	270.00	407.58	793.40

191. Notwithstanding that the Tribunal determined the reasonable insurance premium to be £856.11 the Tribunal finds that the Respondent has omitted to inform the insurers of a material fact of which the Applicants made the Respondent aware which is likely to cause the insurance to be repudiated or

reduced. The Tribunal therefore determines the insurance premiums to be unreasonable and not payable.

192. The Tribunal determines that the reasonable Service Charge payable for each of the Years in Issue by each of the Applicants is for the year ending 31st December:
2018 £270.00
2019 £407.58
2020 £793.40

Administration Charges

Evidence

193. In the course of the Hearing the Applicants referred to a letter demanding Administration Charges that the Respondent had included in the Bundle. The Applicants said that they had seen the letter previously and had expected it to be included in the Completion Statement in respect of the enfranchisement proceedings whereupon they would have made representations as they considered the charges unreasonable. These Charges had previously not been requested by the Respondent's solicitor or the County Court Witness Statement during Vesting Order proceedings in relation to the enfranchisement process. Neither were they referred to in documentation submitted in accordance with Tribunal Direction 2 in respect of the current proceedings. The Applicants had not included an Application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as they were not aware that the Respondent was still pursuing the claim. However, they were ready to make submissions at the Hearing.

194. The Respondent's Representative, attending the hearing, stated that as they were administration charges and not service charges then they should be the subject of a separate application. In addition, he said he was not in a position to make submissions as he did not know they were in issue.

195. The Tribunal gave leave to the Applicant to make an application in respect administration charges and subsequently issued Directions. The Applicants made an Application and Statement in respect of the reasonableness and payability of the Administration Charges claimed by the Respondent which were set out in a letter dated 1st December 2019 as follows:

03/12/2018 Balance brought forward	£1,208.43
Ground Rent - January/June 2019	£100.00
Service Charges - December 2018	£3,108.90
04/01/2019 Payment received	£100.00
Interest	£5.75
23/01/2019 notice of proceedings	£120.00
Interest	£10.69
30/01/2019 Payment received	£1,208.43

Interest	£4.06
04/02/2019 interest	£2.11
Solicitor costs	£600.00
Admin costs	£360.00
Solicitor costs court summons	£600.00
Admin costs	£240.00
Land Registry Fee	£5.00
Court Fee	£455.00
Ground Rent - July/December 2019	£100.00
08/07/2019 Payment received	£100.00

Total due: £6,919.94
Total Paid: £1,408.43

Total left outstanding: £5,511.51

196. The Charges are claimed under Paragraph 7.1 of Schedule 4 of the Lease.

197. The Applicants stated that following a series of emails to the Respondent's Representative regarding the Insurance Rent and Service Charges, on 19th February 2019, the Applicants' solicitor, Chan Neill Solicitors (copy provided), had written to object to the demands that had been made, stating in particular that:
- The Insurance Rent had been demanded incorrectly and no account had been taken of the shared access either in the Insurance itself or the apportionment of the Insurance Rent; and
- The Service Charges were excessive.

198. No adequate response was received. Subsequently the above letter was served on the Applicants.

199. With regard to the costs claimed, £120.00 is demanded (seemingly per flat) for a Notice of Proceedings which was never received and Solicitors' Court summons of £600.00 and Court fee of £455.00 (seemingly per flat) when proceedings were never brought.

200. The Applicant submitted that all other fees, interest and costs quoted are unreasonable and unreasonably requested when the service charges and buildings' insurance themselves were unreasonable in that they were not reasonably incurred or were too high and not requested in compliance with the lease. Given the above circumstances, it is respectfully requested that the Tribunal determine that these Administration Charges amounts are not reasonably payable.

201. No representations were received from the Respondent.

Decision re Reasonableness of Administration Charges

202. The Tribunal identified the following Administration Charges claimed under Paragraph 7.1 of Schedule 4 of the Lease

04/01/2019 Interest	£5.75
23/01/2019Interest	£10.69
30/01/2019 Interest	£4.06
04/02/2019 interest	£2.11
Solicitor costs	£600.00
Admin costs	£360.00
Solicitor costs court summons	£600.00
Admin costs	£240.00
Land Registry Fee	£5.00
Court Fee	£455.0
Total	£2,282.61

203. The Tribunal found that there was no evidence adduced as to when or how these costs had been incurred. The Tribunal required further information with regard to the solicitors' costs as to the grade of solicitor engaged, their hourly fee and what tasks had been undertaken. Similarly with regard to the Administration Costs, who had undertaken the work what did the work entail. No invoices were provided for the Solicitors' Costs, or the disbursements (Land Registry and Court fees).

204. Irrespective of the lack evidence, the Tribunal found in making its determination that both the Insurance and the Service Charge Demands were defective in that the Insurance Demands had not provided the information as required in the Lease and the Service Charge had been demanded as a single sum without any reference to the Lease which required payment in two instalments.

205. In addition, the Tribunal found that no adequate response had been made to either the e mails from Mr Hoye or to the Applicants' Solicitors in respect of information sought regarding the matters raised, most particularly the Insurance.

206. Therefore, the Tribunal determines that the Administration Charges of £2,282.61 are unreasonable and not payable.

Section 20C Landlord and Tenant Act 1985 & paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002

207. The Applicants applied for an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

208. In the event of there being a provision in the Lease which permitted the Respondent claiming its costs of the proceedings through the Service Charge or directly from the Applicants the parties made the following submissions.

209. The Applicants submitted that they had tried to engage with the Respondent's Representative with regard to the Service Charge but stated that as was evidenced by the e mail exchanges since the first estimated Service Charge demand they had had no success in having a meaningful dialogue. They said that none of the reports or assessments have been received and any service charge documentation provided (other than demands) has only been reluctantly sent as a result of a solicitor's request during enfranchisement proceedings.

210. Mr Hoye said that he understood from his solicitor that the Respondent did not comply with Tribunal Directions in that service charge evidence was served one week late with all service charge years jumbled into one disorganised mess and that documents have had to be completely reorganised to form a minimum of coherence.

211. The Respondent's Representative said that the Applicants intended to proceed with the Application irrespective of what the Respondent said. He said the estimated costs were reasonable and demanded in accordance with the Lease and notwithstanding the provision of the account of the actual costs the Applicants refused to pay. He added that the proceeding would not have been taken except that the Applicants wished to enfranchise and therefore had to settle the matter. He said that they had stopped paying the Service Charge 10 months before the first Notice to enfranchise.

Decision re Section 20C Landlord and Tenant Act 1985 & paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002

212. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.

213. The provision enabling a landlord to claim its costs through the service charge is collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.

214. The provision enabling a landlord to claim its costs directly from a tenant is an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from a tenant.

215. First the Tribunal considered whether there was a term in the Lease which permitted the Respondent to re-charge its costs of these proceedings a) to the tenants through the Service Charge and b) directly.

216. The Tribunal found that the proceedings were not an action for enforcement of covenants against the Flat Tenants and so did not come within the provisions of Paragraph 8.1 of Schedule 6. Also, Paragraph 1.1.2.3 of Part 2 of Schedule 7 relates to the costs of a person retained to act in connection with the Building or services which this is not. The Tribunal therefore decided that there was no provision in the Lease which enabled the Respondent to claim its costs through the Service Charge.

217. As stated, the Tribunal found that the proceedings were not an action for enforcement of covenants against the Flat Tenants and so did not come within Paragraph 7 of Schedule 4. The Tribunal therefore decided that there was no provision in the Lease which enabled the Respondent to claim its costs directly from the Applicants individually as Tenant.

218. Secondly the Tribunal considered whether, if there were a provision in the Lease, it was just and equitable to make an order under to make an order under Section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. In doing so the Tribunal considered the conduct of the parties and the outcome.

219. The Tribunal found that the Respondent or its Agent should have addressed the issue of whether the insurer was aware of the shared access. It should also have provided information regarding the insurance explaining its reasons for the premium applied to the Building. In addition, it should have ensured that the Demands for Insurance Rent and the Service Charge were compliant with the Lease giving the required information and manner of payment. Furthermore, it should have engaged with the only two Tenants of the Building to facilitate its management, which should have been relatively straightforward.

220. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

221. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Costs re Section 33 Leasehold Reform and Urban Development Act 1993

Evidence

222. The Applicants applied for a determination of the costs of the Respondent payable by them pursuant to section 33 of the Leasehold Reform and Urban Development Act 1993.

223. A Completion Statement was provided for the enfranchisement of 16b and 16c St Johns Road, Epping CM16 5DN setting out the costs claimed by the Respondent as follows:

Assethold Limited to William Jonathan Hoye, Kirsty Lauren Hoye and Nicola Fox
Completion date: (As at 16th July 2020)

Description	Amount (£)
Premium	10,000.00
ADD	
Arrears	
Service Charges	12,981.08
Ground Rent - Flat B	400.00
Ground Rent - Flat C	300.00
Costs	
Valuation per copy invoice herewith	1,125.00
ADD VAT	225.00
Greenwood & Co. per breakdown herewith	2,985.00
ADD VAT	597.00
Special Delivery postage	6.60
ADD VAT	1.32
Managing Agents	300.00
ADD VAT	60.00

Amount due on completion: 28,981.00

224. The letter on page 704 and the email on page 707 of the Bundle showed that the legal and postage costs were withdrawn and the only cost in issue was the Valuers' fees of £1,250.00 plus VAT and the Managing Agents Fees of £300 plus VAT.

225. The Applicants submitted that the Valuer's fees were excessive but provided no alternative quotations. The Applicants also stated that the Managing Agents' Fees of £300.00 plus VAT were not a charge within section 33 of the 1993 Act.

226. The Respondent said that the Valuer's fees were in line with those charged by other surveyors. In response to the tribunal's questions the Managing Agent's Representative said that the Managing Agent Fees were for advising the Respondent and its Solicitor as to the Service Charge, Ground Rent and any other amounts outstanding to enable the Completion Statement to be prepared. He added that the charge was reasonable. As to whether the amount was chargeable he referred the Tribunal to Section 33(2) of the 1993 Act identifying in particular the words "any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person". He said that this meant that secton 33 applied to *any* professional person rendering services including a managing Agent and to just a solicitor or surveyor.

Decision re Section 33 Leasehold Reform and Urban Development Act 1993

227. The Tribunal considered whether the charge for the Managing Agent providing information for Completion statement was chargeable under section 33 of the 1993 Act. It noted that the provision in subsection (2) was for the purposes of subsection (1). Subsection (1) states that the cost must be incidental to any investigation reasonably undertaken in respect of any interest in the premises to be acquired or arising out of the notice, deducing evidencing and verifying the title to the interest, furnishing abstracts, valuing the premises and conveying them. In the Tribunal's opinion this does not include that of a Managing Agent providing information regarding outstanding service charges.

228. However, if it did the Tribunal considered that the cost of providing such information was within the Management Fee charged by the Managing Agent. The Tribunal therefore determined that the charge of £330.00 was not reasonable.

229. The Tribunal considered that the Valuation Costs of the Respondent were high but in the absence of evidence to the contrary were not unreasonable. The Tribunal determined that the Valuation Costs of the Respondent payable by the Applicants pursuant to section 33 of the Leasehold Reform and Urban Development Act 1993 are £1,500.00 including VAT.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

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

4. 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 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996, Landlord and Tenant Act 1987 and Commonhold and Leasehold Reform Act 2002.

2. Landlord and Tenant Act 1985

   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, improvement 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 of which the service charge is payable.
   (3) for this purpose
      (a) costs include 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 period

3. Landlord and Tenant Act 1985

   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 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.
   (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.

4. Landlord and Tenant Act 1985

   Section 20B Limitation of Service Charges: time limit on making demands
   (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

5. Landlord and Tenant Act 1985

Section 21A Withholding of service charges

(1) A tenant may withhold payment of a service charge if—
  (a) the landlord has not provided him with information or a report—
    (i) at the time at which, or
    (ii) (as the case may be) by the time by which,
    he is required to provide it by virtue of section 21, or
  (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
  (a) the service charges paid by him in the period to which the information or report concerned would or does relate, and
  (b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3) An amount may not be withheld under this section—
  (a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or
  (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

6. Landlord and Tenant Act 1985

Section 21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

7. Landlord and Tenant Act 1985

Section 27A

(1) 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.

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

(3) An application may also be made to a leasehold valuation 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 arbitration agreement to which the tenant was a party
   (c) has been the subject of a determination by a court

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

8. Landlord and Tenant Act 1985

20C Limitation of service charges: costs of proceedings.

(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 a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) 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.

9. Commonhold and Leasehold Reform Act 2002

Paragraph 5A Schedule 11
Limitation of administration charges: costs of proceedings

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

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

10. Leasehold Reform and Urban Development Act 1993

Section 33 Costs of enfranchisement

(1) Where a notice is given under sectino13, then (subject to this section and section 28 (6), or 29 (7) and 31 (5) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely -

(a) any investigation reasonably undertaken-

(i) of the question whether any interest in the specified premises or other property liable to acquisition in pursuance of the initial notice, or

(ii) of any other question arising out of the notice

(b) deducing evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for such costs.