FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LSC/2021/0349** **LON/00AM/LUS/2021/0005**
Property	**:**	**Flats 1 and 3 105 Green Lanes London N16 9BX**
Applicants	**:**	**(1) Ms K Gethings (flat 1)** **(2) Mr N Cooke (flat 2)** **(3) 105 Green Lanes (RTM) Company Ltd**
Representative	**:**	**First and second Applicants, in person, third Applicant, Ms Gethings**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr P Harrison of counsel**
Applications	**:**	**For the determination of (1) in respect of the first and second Applicants, the reasonableness/liability to pay a service charge/ administration charge and (2) in respect of the third Applicant, the amount of a payment of accrued uncommitted service charge to an RTM Company**
Tribunal Members	**:**	**Judge Prof R Percival** **Mr S Wheeler MCIEH, CEnvH**
Date and venue of Hearing	**:**	**6 July 2022** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**18 July 2022**

DECISION

The application

1. The first and second Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years from that ending in September 2016 to the year ending September 2021, and for a period from September 2021 until to 11 October 2021.

2. The third Applicant seeks a determination as to the amount of a payment from the Respondent of accrued uncommitted service charges under section 94 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 At").

3. The applications under section 27A of the 1985 Act and section 95 of the 2002 Act were ordered to be considered at the same time. In the light of the issues raised, it is convenient for the Tribunal's decisions on both applications to be set out in a single compendious decision.

4. The relevant legal provisions are set out in the Appendix to this decision.

The properties

5. 105 Green Lanes is a four storey Victorian terraced house converted into four flats. The first Applicant is the lessee of flat 1, the second the lessee of flat 3. Mr R Hall and Mr P Cuthbertson are lessees of flat 2. The Respondent retains flat 4, a studio flat.

The lease

6. We were supplied with a copy of the lease of flat 1. We were told that the other leases were in substantially the same form. The lease is dated March 2011, and is for a term of 125 years. The Respondent acquired the freehold in 2011.

7. The first schedule sets out the extent of the demise, and includes "the doors, windows and the frames and glass of each of them."

8. The tenant's covenants are set out in the fourth schedule and those of the landlord in the fifth (clauses 3 and 4).

9. The tenant's repairing obligation appears in paragraph 4 of the fourth schedule, and include an obligation to "keep the Premises clean and tidy and to clean all windows in the Premises at least once a month".

10. By paragraph 8, the tenant covenants

> "to pay all proper costs charges and expenses (including solicitors' costs and architects' and surveyors' fees) incurred by the Landlord for the purposes of or incidental to the preparation service or enforcement (whether by proceedings or otherwise) of
>
> 8.1 Any notice under Section 146 or 147 of the Law of Property Act 1925 (as amended) requiring the Tenant to remedy a breach of any of the Tenants covenants herein contained notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court …
>
> 8.3 The payment of any arrears of the Rent Interim Charge or Service Charge or interest payable thereon.

11. The covenant to pay the interim service charge and the service charge is at paragraph 31 of the fourth schedule.

12. Paragraph 9 regulates underletting. Underletting of a part is not permitted, as is underletting the whole in the last seven years, without consent. Otherwise, there is provision for notice to be given of underletting of the whole.

13. The landlord's insurance obligation is at paragraph 5 of the fifth schedule, the relevant risks being set out in convention terms at sub-clause 1.9 in the definitions clause.

14. The repairing obligation in paragraph 6 of that schedule is to "maintain and keep in good and substantial repair and condition" the structure and services, but not any part demised.

15. Paragraph 7 is a covenant by the landlord to decorate the exterior from time to time.

16. By paragraph 8, the landlord covenants to keep the common parts cleansed, repaired, decorated and lit.

17. The sixth schedule sets out what falls within the service charge. These include the landlord's obligations to insure, repair etc, decorate the exterior and in respect of the common parts, and (excluding some repetition of the fifth schedule obligations) to "the cleaning of the exterior of the windows of the Building" (paragraph 4) and "the engagement of the services of surveyors or agents to manage the Building and the Common Parts and to collect the rents and to carry out such other duties as may from time to time reasonably be assigned to them by the Landlord" (paragraph 6).

18. The seventh schedule sets out the service charge mechanism in detail. Provision is made for a reserve fund, in addition to collection of a service charge to pay for the matters in the sixth schedule (paragraph 1). The interim service charge is defined as "such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord (or its managing agents or accountants) shall reasonably specify to be a fair estimate of the Service Charge that will be payable by the Tenant", but with a proviso that if urgent work is necessary, the landlord may demand an addition to the interim service charge to be immediately demanded and paid. The interim service charge is to be paid in advance by instalments on 25 March and 29 September (paragraphs 1.4 and 2). Provision is made for reconciliation by further demand or credit (paragraphs 3 and 4). The landlord covenants to provide a certificate as soon as practicable after the end of the service charge year, giving details of the total service cost, the interim charge paid and any surplus brought forward, the service charge and of demands or credits on reconciliation (paragraph 5), with a parallel obligation in respect of the reserve fund (paragraph 6).

19. The Applicants state that the proportions of the total service cost payable by each flat are 40% for flat 1, 35% for flat 3, 19% for flat 2, with the remaining 6% attributed to flat 4.

20. The exact date of the service charge was in issue (see below).

The issues and the hearing

21. The first and second Applicants represented themselves. Ms Gethings spoke for both of them for the most part. Ms Gethings is a director of the third Applicant and represented it at the hearing. Where we refer to "the Applicants" without more, we mean the first and second Applicants in the context of the section 27A application. Mr Harrison represented the Respondent.

22. The lessees acquired the Right to Manage, and the Right to Manage Company took over management on 11 October 2021.

23. At the start of the hearing the parties identified the relevant issues for determination as follows, in the order in which we considered them:

    (i) The validity of the service charge accounts and demands;

    (ii) Emergency telephone line;

    (iii) Insurance premiums;

    (iv) Insurance reinstatement survey;

(v) Window cleaning;

(vi) Section 20 consultation administration fees;

(vii) Drain service;

(viii) Fire risk assessment reports;

(ix) Fire door inspections and reporting

(x) Fire alarms and smoke detectors;

(xi) Preventive maintenance schedule;

(xii) Works to the electricity meter cupboard;

(xiii) Ad hoc demand for works (21 July 2021);

(xiv) Cleaning;

(xv) Cost of accounts;

(xvi) section 93 costs;

(xvii) Management fees;

(xviii) The application under section 94 of the 2002 Act

24. In advance of the hearing, the Respondent agreed that charges amounting to £1,110.74 in respect of two invoices from a company called Property Run had been wrongly charged to the service charge, as they related to the Respondent's retained flat.

25. Throughout this decision, we use the overall, unallocated figures for costs. Where we find that costs were not reasonably incurred or payable, the first Applicant was not obliged to pay 40% of the relevant sum and the second Applicant similarly 35%.

The validity of the service charge accounts and demands

26. The Applicants submitted that all of the service charge accounts and demands were served at the wrong time, and were thereby invalid. In every year, the Respondent's managing agents, Eagerstates Ltd, served a document headed "accurate service charge account" setting out the actual service charge for the previous year and, at the same time, a demand for the first instalment of the interim service charge. These

accounts and demands were served in early September, between 1st and the 7th.

27. The lease required the service of actual service charges as soon as practicable after the end of the service charge year. Accordingly, the actual service charge account was served before, not after, the end of the service charge year, the Applicants submitted, and was therefore not in accordance with the lease.

28. Applicant's case was based on the understanding that the service charge year ran from the 30 September to the 29 September the following year. In response, Mr Harrison argued that we should infer from the documents that the service charge year ran from 1 September each year. This submission relied on the mirror-image argument to that made by the Applicants. We should imply a 1 September start date *because* Eagerstates served the notices when they did.

29. The lease provided that the "accounting period" – the service charge year – should start on 1 January, or "such other date as may be substituted therefor at the discretion of the Landlord" (paragraph 1 of the seventh schedule). Interim service charges were payable on 25 March and 29 September. It was, therefore, common ground that the Respondent had exercised its discretion to change the service charge year from the calendar year.

30. On balance, we prefer Mr Harrison's submissions as to the service charge year, and adopt it hereafter. However, the distinction between the two contending years is, in our view, not determinative in any event.

31. We adopt the approach suggested in Woodfall, Landord and Tenant at paragraph 7-179 as to when the service of service charge accounts at the end of a service charge year is a condition precedent to the obligation on the tenants to pay the service charge:

> "It is necessary to identify the minimum requirements laid down by the lease before the obligation to pay the service charge will be created, and then to consider whether the circumstances of the case satisfy those minimum requirements; in considering those matters, it is not appropriate to adopt a technical or legalistic approach, because the service charge provisions of leases are practical arrangements which should be interpreted and applied in a businesslike way …"

32. In this case, the minimum requirements were that a clear statement of the actual service charge demands were served at or about the time of the end of the service charge year. Even if the service charge year was

from 30 September rather than 1 September, the service of the demands between 1st and 7th of the month was adequate notice.

33. *Decision*: The service charge accounts and demands were not served at a time which rendered them invalid.

Emergency telephone line

34. In 2016, 2017 and in the final accounts in 2021, charges amounting to a total of £144 were made by the Respondent for making available an emergency telephone line to the Applicants. The Applicants said that they were not aware of any such line, and disputed whether it existed.

35. The Respondent said such a line existed, and had been communicated to the Applicants as a result of it appearing on Eagerstates headed paper, upon which accounts, demands and other communications were made. The Respondent made available a prospectus relating to the emergency line, which was provided in the bundle.

36. We reject the Respondent's submissions.

37. The text on the letterhead immediately above the telephone number reads "Emergency line for subscribers:". The prospectus is entitled "Emergency Help Line Client Pack". On the first page it reads "Eagerstates Limited Emergency Line is available to clients at a low annual subscription of £10.00 plus VAT per property, per annum (for example 10 apartments = £100.00 + VAT per annum)".

38. Eagerstates' clients are freeholders, not leaseholders. The prospectus, with which the notice on the letterhead is consistent, is clearly directed at marketing the service to freeholders, who would subscribe to the service. It may be that, if a freeholder did subscribe, then use of the line might have been made available to tenants (and indeed the cost might be passed on to tenants), but the evidence before us did not include a statement that Assethold had subscribed to the service or that the leaseholders had been told that, Assethold having subscribed, they may use the line.

39. *Decision*: The charges made in respect of the helpline relate to a service that was not made available to the leaseholders, and is not payable.

Insurance premiums

40. The Applicants argued that the insurance premiums from 2017 to 2020 were excessive. The insurance was arranged with a November start date for each year's cover. The contested premiums were those from November 2017 to November 2020, the premiums being respectively £1,916; £2,040; £2,139 and £2,570.

41. When the RTM Company took over management, Ms Gething told us, they secured insurance for a premium of £1,429. This, Ms Gething said, indicated that the Respondent's insurance cover was too expensive, and, to reduce it to a reasonable level, there should be reductions of £1,000 for the last year, £900 for the year before, and £750 for the preceding two years.

42. Mr Harrison submitted that the insurance policy taken out by the RTM Company was not like-for-like that secured by the Respondent. The key difference was that the RMT Company's policy was written on the basis that letting to sub-tenants was not permitted. The lease allowed underletting. In addition, there was a term specifying that cooking could only take place in a designated kitchen, a restriction not imposed by the lease, and that a flat roof had to be inspected every five years, which would increase costs.

43. Ms Gethings agreed that the premium for the RTM Company's policy would have been very much more expensive if they had not excluded sub-letting, but the three leaseholders were, in fact, resident. They were able, therefor to take advantage of a policy that did not cover damage by sub-tenants.

44. Where sub-letting was allowed under the lease, the Respondents could not take out insurance that required that there be no sub-letting, a proposition that, by the end of the discussion at the hearing, we understood Ms Gethings to agree with. Whether such a policy is appropriate for the RTM Company is not a matter for us. The other two differences identified by Mr Harrison would also make some, but far less, difference.

45. To the extent that the Applicants may have suggested that there was some flaw with the Respondent's policy (a tentative suggestion, if made), we reject it. It is not credible that Assethold's block policy does not cover appropriate risks, including from sub-tenants.

46. The cost of the difference in respect of sub-letting was not quantified before us, but it appears to us that it would have been substantial, such that we cannot conclude that the RTM Company's policy provides a realistic basis for the Applicants' submissions (a conclusion we understood the Applicants to have accepted by the conclusion of this item).

47. *Decision*: The costs relating to the insurance premiums from November 2017 to November 2020 were reasonably incurred.

Insurance reinstatement survey

48. The Respondents charged for two insurance reinstatement surveys carried out by JMC Chartered Surveyors at a cost of £720 in November

2016 and again in June 2020 for £297. The Applicants argued, first, that there was no provision under the lease for making the payments. Secondly, they argued that the costs were in any event too high. They relied on the fact that the firm were based in Manchester, and must have incurred excessive travelling costs.

49. Mr Harrison submitted that the costs were chargeable under the provision in paragraph 6 of the sixth schedule (see paragraph [17] above). As to the amount, no alternative quotations were provided, and the use of a Manchester firm is likely to have saved costs.

50. We accept the Respondent's submissions.

51. The lease allows for the charging of these costs, either under the provision identified by Mr Harrison, or as a necessary and inescapable incident of the insurance obligation.

52. As to the amount of the fees, Mr Harrison is right that there was no alternative quotation provided. At most, there should be no assumption that a Manchester firm would be more expensive than one located in London, without an alternative quotation. Further, applying the Tribunal's general knowledge of the scale of such fees in Greater London (knowledge gained from general experience rather than disclosable discrete pieces of evidence), the fees are moderate, on the assumption that the first required a visit, and the second may only have been a desk exercised based on (in part) the first visit. We note that the first invoice explicitly referred to a visit to the site, while the second only referred to "inspecting" and reporting.

Window cleaning

53. In February and again in May 2019, a window cleaning company engaged by the Respondent sought to clean the external windows. The lay out of the building is such that access to the rear, at ground level, can only be obtained by going through Ms Gethings' flat. Ms Gethings' evidence was that the cleaning company contacted her, seeking access to clean the windows. Ms Gethings contacted Mr Gurvits of Eagerstates and told him they cleaned their own windows. Mr Gethings relates that Mr Gurvits said that they, the tenants, were under an obligation to allow access to the window cleaners to clean the windows under the lease. In the event, the refusal of Ms Gethings to allow access meant that the windows were not cleaned. The sum of £105 was charged to the service charge for the two (failed) attempts to clean the windows, those being the invoices that were charged to the Respondent.

54. The windows are demised. Accordingly, the Applicants argued, they were responsible for cleaning them. In the statement of case, the argument is that the provision in the lease that cleaning the external

windows was an item that could be charged to the service charge meant that the lease was contradictory.

55. Mr Harrison argued that it was not unusual for exterior demised elements to be within a landlord's repairing clause, and that the lease was clear, referring to the reference to external cleaning as an item chargeable to the service charge. He submitted that we should construe the lease to be consistent, which meant interpreting the demise, and the obligations on the tenant, as limited to the internal surfaces of the windows.

56. With respect to Mr Harrison, we do not consider it at all usual for the landlord's repairing obligation to extend to demised elements. It is much more usual for the demise and the obligations to dovetail. But in any event, it is this lease that we must construe.

57. The provision in schedule six in relation to the windows is odd. All the other items specified in the schedule reflect an obligation imposed on the landlord, or costs incidental to or implied by such obligations (such as employing professionals in order to manage the property). There is no reference to any *obligation* on the landlord in respect of the demised windows anywhere in the lease, merely this reference in a list of items the costs of which are referable to the service charge.

58. On the other hand, the tenant's covenants do contain a general repairing obligation in respect of the "the whole of the premises", the premise being defined as in the first schedule. The covenant goes on to impose a further obligation to "clean all the windows in the Premises once in every month". Given the unqualified reference to the windows in the description of the demise in the first schedule, the natural reading of "all the windows" is that it includes both the exterior and the interior of each window.

59. If Mr Harrison were right that the reference to the windows in the demise and/or the cleaning obligation must be construed as limited to the internal surfaces, it would mean that the reference to window cleaning in the sixth schedule, un-hinged from any obligation as it is, forces us to imply qualifications to the otherwise plain wording of the demise, and/or the covenant to keep the flat clean and tidy. The implication is, further, not limited to the demise and/or this obligation. Given there is no express obligation on the landlord to clean the external windows, that too must be implied.

60. Mr Harrison's submission presents another problem, at least if the implied limitation applies to the demise as well as the obligations. One good reason why it is almost universally the case that both surfaces of the glass in a window are demised (even where, for instance, the external surface of the frames is not) is to make it clear that the tenant is solely responsible for mending a broken window. It makes no sense

to think about a window as having two surfaces, with a divided repairing obligation, given the fragility of glass.

61. Given the lack of any *obligation* on the landlord to clean the external windows, we prefer to construe the clause in the sixth schedule as one that allows the landlord to claim for the cost of cleaning if it does, voluntarily, decide to clean them, despite being under no obligation to do so.

62. And there is at least some logic in making such provision. If a tenant neglected his or her obligation to clean the windows, it could be reasonable, to maintain the general level of maintenance and cleanliness of the building, for the landlord to voluntarily do so, without having to engage the mechanism otherwise provided for in the lease to intervene intrusively to correct a failure of a tenant to maintain his or her flat. A natural concomitant to that would be that the landlord could reclaim the cost from the service charge.

63. If this is the correct interpretation of the lease, the question of whether the cost of cleaning the windows is reasonable in section 27A terms depends on whether the decision of the Respondent to take upon itself the task of cleaning the windows was a reasonable one. Was there, in other words, a good reason for it to step in and clean the exterior windows?

64. For that decision to be a reasonable one, there must have been some reason for it. None is suggested in Mr Gurvits evidence. One would expect, as a preliminary to any decision to undertake the cleaning voluntarily, that an enquiry would have been made of the tenants as to the state of cleanliness of the windows.

65. Ms Gethings' uncontradicted evidence in her witness statement is that she explained to Mr Gurvits that the tenants cleaned the exterior windows, and had procured ladders and other equipment to do so. She said that she even sent him photographs to illustrate the cleaning. She did this as a result of the cleaning company requesting access, but we can safely assume that, had Mr Gurvits simply asked her if they cleaned the exterior windows, she would have given the same answer. Had she done so, there would have been no reason for Mr Gurvits to decide that the managing agents should clean the windows (or, at least, if there where such a possible reason, it has not been vouchsafed to us).

66. In these circumstances, the decision to voluntarily clean the windows and reclaim the costs through the service charge was not a reasonable one, and accordingly the costs were not reasonably incurred.

67. *Decision*: The costs of window cleaning were not reasonably incurred.

Section 20 consultation administration fees

68. In 2019, Eagerstates served a notice of intention to carry out works in respect of external decoration, commencing a consultation exercise under section 20 of the 1985 Act, and the regulations made thereunder. Ms Gethings obtained an estimate from a decorator (for £2,880) and submitted it to Eagerstates, who accepted it. Thereafter, it was Ms Gethings uncontested evidence that she made all the arrangements with the decorator to undertake the job.

69. Ms Gethings accepted the decorator's fee as reasonable, but contested the managing agent's charge of £518.40. She submitted that, where she had undertaken all of the work to administer the job and Eagerstates' contribution was limited to serving a single section 20 notice, all that would be reasonable for them to charge would be £250 plus VAT.

70. Mr Harrison submitted that 15% was the standard rate that managing agents charged in London to undertake section 20 consultations. Some such exercises involved a lot work, some much less – "you win some, you lose some" – and the charge was reasonable.

71. Insofar as Mr Harrison was submitting that a fixed percentage fee is a common and acceptable method for managing agents to charge for administering at least smaller scale section 20 consultations, we agree with him. However, the experience of the Tribunal is not that 15% is the standard rate. Rather, our experience (of a general nature, not amenable to the disclosure of specific pieces of evidence) is that the normal range is from 6% or 8% to 15% at the top of the range.

72. It follows that we think that in general, a fee of 15% is within the reasonable range (if at the top end). However, there is force in Ms Gethings' submission that in this instance, she had done nearly all of the work necessary to organise and supervise the job, without, it appears, any contribution or offer of contribution from Eagerstates. That a leaseholder would do so is an exceptional situation. Mr Harrison's "win some, lose some" justification for a flat rate is a reasonable one, where winning is a managing agent conducting the necessary work and it being a simple job, and losing is similarly do the work, but it is time consuming or complicated. It does not cover a situation where the managing agent simply does not do much of the work at all. In the particular circumstances of this job, it is not reasonable for the full 15% charge to be passed on to the leaseholders. We agree with Ms Gethings that Eagerstates' flat rate minimum charge of £250 plus VAT would have been reasonable in the circumstances. That comes out at 8.7% of the contract price.

73. Decision: The application of the managing agents' fixed fee to the major works contract in respect of external decoration in 2019 was not reasonable. A reasonable fee in substation would be £300 including VAT.

Drain service

74. It was Ms Gethings' evidence in her witness statement that in September 2019, a company called Aquevo attended the property to check the drains. After an episode relating to securing access to the manhole, the company, according to Ms Gething, agreed that the drains were in good working order (a conclusion previously reached by Ms Gethings' husband and shared with Eagerstates). Ms Gethings' evidence was that the invoice stated that operative had used "specialist HPWJ to clean and clear all drains." The invoice in the bundle simple charged £85 plus VAT for labour. At the lunch adjournment, Ms Gethings found the two additional pages which followed the single page in the bundle, which did contain that text. Mr Harrison did not object to us seeing them.

75. Mr Harrison submitted that the preventative maintenance schedule recommended a drains inspection every 12 months, and this appears to be what happened.

76. We accept Ms Gethings' account of the visit. However, all that was charged by the company was one hour's labour, which we infer was the company's minimum call-out charge (anything less would be surprising). The dispute about what was actually done does not, therefore, in our view affect the reasonableness of the charge made.

77. Decision: The charge of £102 including VAT for drains service in 2019 was reasonably incurred.

Fire risk assessment reports

78. Charges were made for fire health and safety assessments which took place in January 2019 (£288) and June 2020 (£350). Ms Gethings' submission was that the second inspection took place before all the work recommended in the first had been carried out and was premature.

79. Mr Harrison said that the work had been done (and was not confined to fire safety). Although there was no obvious trigger for the second report, the second report had established a review date one year after the date of the report, or earlier if there had been any relevant changes etc.

80. It is undoubted that a landlord is obliged to undertake fire health and safety assessments periodically. The length of the relevant period depends primarily on the level of risk associated with the particular setting. A converted house with three flats and a studio flat is low risk, compared to other flat settings. We see the question for us as being whether the period of less than 18 months between assessments is excessive. A review of an assessment is a less extensive and cheaper exercise than a full assessment. Here we have two assessments in a

short period in a low-risk context. It is not necessary for us to determine the relevant period between assessments, but it is clear that to procure a new report in less than eighteen months for a low risk property with minimal common areas is excessive and thereby unreasonable. Accordingly we consider the cost of the first assessment reasonable, and the cost of the second not reasonable.

81. Decision: The charge for a second fire health and safety risk assessment in 2020 was not reasonably incurred.

Fire door inspections and reporting

82. There were two fire door inspections in the year ending September 2021. We understand it to be accepted that there are five fire doors, one for each flat and one for the meter cupboard. The situation as to what was inspected when is not entirely clear, because the first invoice appears to claim five doors inspected. But we think what probably happened was that four doors were inspected on the first occasion, and it was then necessary for the company to revisit to inspect the last door. The first visit is invoiced at £312.60, and the second £136.20. All of the doors were found to be complaint.

83. Ms Gethings objects that the figures are too high. In the Scott schedule, Mr Gurvits says that no alternatives have been supplied. There was some argument as to whether reports had been supplied, or whether, if they had, they were comprehensible, but we do not consider it necessary to enter into this issue.

84. A door is either a compliant fire door, or it is not. It is a straightforward matter for a qualified person to establish this in a very few minutes, provided a proper inspection can be made (ie it is possible to view both sides of the door). There is nothing complicated or site-specific about such an inspection, and it should take a small number of minutes. We conclude that, on its face, these invoices are excessive for this straightforward matter. Reasonable figures for the first visit and the inspection of four doors would be £160, and £90 for the second, plus VAT.

85. *Decision*: The charges made for the inspection of fire doors were not reasonably incurred. A reasonable figure in substation for both visits would be £300.

Fire alarms and smoke detectors

86. In the year ending September 2021, £1,440 was charged for the installation of fire alarms and smoke detectors, including the charge by Eagerstates for organising a section 20 consultation. A previous estimate had been much higher, but was not persisted with, for reasons we do not need to detail.

87. The Applicants object that the costs were excessive. The basis for this claim was that the Applicants had sought (retail) prices for all the items that were installed (heat alarms, radio link bases, smoke alarms). The total sum so arrived at was £580. Ms Gethings said that the installation took about an hour and half, and was performed by two employees of the company, Essential Safety Products ("ESP").

88. The charge made by ESP was £950 before VAT. The rest of the bill to the Applicants is the VAT on that, and Eagerstates minimum section 20 charge of £250, plus VAT.

89. We do not think that the calculation made by the Applicants supports their submission. If we assume that they are right that material costs were in the region that they state, and that the labour cost was three hours, we think that £950 would be a reasonable sum. The sum claimed by ESP would, of course, reasonably have included an element for overheads and profit.

90. *Decision*: The charge for installing alarms and smoke detectors was reasonably incurred.

Preventive maintenance schedule

91. A charge of £690 was made in the year ending September 2021 in respect of the fee charged by JMC Chartered Surveyors for preparing a preventative maintenance schedule for the property. The Applicants argued that the schedule was faulty, in that it included comments on the repair of demised items (windows and doors, the terrace or balcony attached to flat 3, an outbuilding in the garden demised to flat 1); that the schedule amounted to no more than a check list of repairs that a competent managing agent could have drawn up; and that, the firm being based in Manchester, they must have accrued excessive travel costs.

92. Mr Harrison argued that it was not an error to include repairs to demised elements. The Respondent was responsible for supervising the tenants' performance of their repairing obligations as well as performing its own. The methodology of the report was clearly laid out, and it was necessary that the work be undertaken by a qualified chartered surveyor. The same considerations as to the location of the firm applied as in relation to the reinstatement report considered above.

93. We agree with Mr Harrison's submissions on each point. By way of a check on this conclusion, the fee is only on any view a moderate one for a report of this nature.

94. *Decision*: The fees of the chartered surveyor in drawing up the preventative maintenance schedule were reasonably incurred.

Works to electricity meter cupboard

95. The Applicants objected to a series of charges for invoices for work to the electricity meter cupboard.

96. The first was dated 20 September 2017, for £229.20. The work, by a company called Security Masters Ltd, related to the installation of a smoke seal, and included a "service to the front door". The two subsequent invoices related to work by another company, Entremark Building Services. The first was on 29 September 2020 for £444, and the second on 14 June 2021 for £333.

97. The force of Ms Gethings' witness statement was that the work should have been done in one go, and proposed a single charge of £400 as reasonable. In the Scott schedule, the Applicants column reads "Unnecessary and/or duplicated works". The entry in the Respondent's column is "No explanation as to why unnecessary, these were required to the doors and were carried out as per the invoices".

98. During the hearing, the Tribunal put it to Mr Harrison that the third invoices seemed on its face to cover rectification of errors in the second. The second invoice (ie the first from Entremark) related the work as:

> "supply and fit fire rated hinges where needed
> Supply and fit door stop
> Remove existing pink foam
> Supply additional passive fire protection to breaches with fire rated filler".

99. The description in the third (second Entremark) invoice was

> "-Supply and install 1 no 'Fire Door Keep Locked' signs that are missing 5.00
> -Adjustment of door to achieve correct gaps all round the door
> -Allowance for light decorating works has been allowed (touch up paint work & caulk where the frame/frames are removed)"

100. Our view from the invoices alone was that the hinges could not have been properly fixed on the door in September 2020 if the door needed further adjustment to provide "correct gaps" in June 2021. In addition, it can only have been the rectification of the earlier work that would require the "light decorating work", and the signs should have been put in place during Entremark's first visit.

101. Mr Harrison invited us not to make that inference, as it amounted to a new argument not put before. We reject the invitation.

102. What was pleaded was "unnecessary and/or duplicated work". Mr Gurvits' response for the Respondent was to rely on the work as described in the invoices. In those circumstances, the Tribunal is

entitled to infer from the work described in the invoices that the work done on the second occasion by Entremark was unnecessary or duplicated, in that it was only necessary because it had not been done when it should have been done, on the first occasion.

103. We add that, on its face, the first invoice looks excessive for the works described. We did not feel we could substitute an alternative figure, however, as the work described was site specific, such that we could not be confident of an assessment without an inspection or photographs.

104. The earlier invoice, that from September 2017, falls into another category. Although the work is somewhat ambiguously described in the invoice, we do not have any basis for considering it either unreasonable on its face, or directly related to work done about three and four years later.

105. As a result, we consider the appropriate way to express the reasonableness of the two Entremark invoices is to allow the first, but allow nothing for the second.

106. Decision: The costs of works to the electricity cupboard in 2017 were reasonably incurred. The sum of the two Entremark invoices for work to the same cupboard in 2020 and 2021 was not reasonably incurred. The reasonable level of charges can be recognised by accepting the 2020 invoice (for £444) as reasonable and not accepting any cost in respect of the 2021 invoice.

Ad hoc demand for works (21 July 2021)

107. For consistency's sake, we retain the title used in the Scott schedule for this item.

108. In July 2021, by way of an additional interim service charge, a demand was made for £3,044 for major works to reconfigure the meter cupboards (ie the full length cupboard for the electricity meter, and the high level, smaller cupboard for the gas meter). The demand reflected an estimate of £2,150 plus VAT from the builder, BML Group Ltd, plus Eagerstates fee plus VAT. The demand was preceded by a section 20 consultation process. Both the first and second Applicants paid their shares of the demand. The process started after the Applicants had initiated the Right to Manage process under the 2002 Act.

109. At some point shortly thereafter, it was Ms Gethings' evidence that a builder appeared at the property. He said he was from BML. He had with him some basic materials (a short piece of timber, draft excluders, locks and hinges), but, when challenged by Ms Gethings and another, was unable to explain what he was there to do, and did not have a work schedule. After calling his office, he went away. Nothing more happened in respect of the proposed works.

110. The Applicants submitted that the charge was not payable under the lease, and no work had been done. In the Scott schedule, Mr Gurvits' note reads "If not carried out it has not been charged for".

111. It was the Respondent's case that no substantive work had been done,, and the advance sums demanded had been credited to the Applicants. A sum of £600 had been charged, and appears in the final accounts as "Aborted meter cupboard works", but was properly payable. As we understand it, no invoice relating to this sum has been provided.

112. During the hearing, the Tribunal and the parties spent some time trying to establish whether the sums had been credited back to the Applicants or not. Eventually, we adjourned so that Mr Harrison could receive instructions from Mr Gurvits to clarify matters. When we returned, Mr Harrison was able to explain how it could be seen that the monies had been credited to the Applicants. Once explained, the Applicants agreed that the credit had taken place. Given this outcome, it is unnecessary for us to explain the process in this decision. However, we note that the Applicants, the Tribunal and indeed Mr Harrison were unable to satisfactorily follow the process until Mr Harrison spoke to Mr Gurvits.

113. No explanation was given as to why these works were necessary (we were not provided with a copy of the notice of intended works). It was not proposed in the preventive maintenance schedule. The demand was made only shortly after the Entremark second invoice (see above).

114. Given the position as to credit that is now agreed between the parties, the legal position of the original demand may be of only hypothetical interest in respect of the demand made. However, we consider it relevant to the "abortive works" charge. The lease provides for an additional interim payment, other than those demanded on the usual days, if a matter is "urgent" (paragraph 1.4 of the seventh schedule, see paragraph [18] above). This demand would, therefore, only have been payable if the matter was urgent. There is nothing to suggest it was even necessary, let alone urgent. The demand was not payable.

115. As to the "aborted works" charge, we are left with a position in which no work has been undertaken, no justification for any work has been advanced, and the initial demand to cover the work was outwith the provisions in the lease. In those circumstances, we can see no justification for this charge.

116. *Decision*: The cost of £600 described as "aborted meter cupboard works" was not reasonably incurred.

Cleaning

117. In the accounts headed "Expenses since 29 September 2021 accounts", a charge of £651.66 is made for cleaning of the communal area by Dove Contract Cleaning Ltd. The bundle contains invoices relating to each month from September 2021 to January 2022. It will be recalled that the RTM Company acquired responsibility for management on 11 October 2021.

118. The invoices provided in the bundle in fact add up to £458.65, plus an invoice for carpet cleaning with a service date of 30 September 2021.

119. Also provided in the bundle is a photocopy of a sheet provided by Dove at the property to be signed by the cleaner when he or she attends. It is meticulously filled in up to 29 September 2021, and not thereafter.

120. It was Ms Gething's evidence that at or about the acquisition date (11 October 2021), she gave Dove notice that they were discontinuing the service, and the lock on the front door was changed.

121. The entry in the Scott schedule says "Charges as per invoices, and cleaning was carried out". Mr Harrison said that his instructions were to that effect.

122. The cost of cleaning that was carried out is chargeable to the service charge. That is represented by the invoice for September 2021, which is for £90.41. The remainder of the charges in that the account were not reasonably incurred, because, as the sign-in check attests, no cleaning was done.

123. One possibility that was not brought to our attention, and so may be wrong, but which occurred to us after the end of the hearing was that it may be that there was a notice period in Assethold's contract with Dove, and the final invoices represented charges made because the cancellation period still had to run. That would make no difference to the reasonableness or lack of it of the charges for cleaning that was not carried out. The contract should have been cancelled earlier (as we understand it, Eagerstates must have known of the acquisition date some months before), and in any event, the mere fact of contractual entitlement cannot be determinative of reasonableness. If Eagerstates entered into a contract that could not be cancelled within a reasonable time, it is for the Respondent to take the penalty.

124. Decision: The only charge for cleaning reasonably incurred in the period from 29 September 2021 is £90.41 as per the invoice dated 1 October 2021.

Costs of accounts

125. Charges were made in respect of invoices from Martin, Heller, a firm of chartered accountants, dated 7 September 2020 (£360) and 2

September 2021 (£420). Ms Gethings said her primary objection had been based on the Applicants' understanding of the service charge year (see above, paragraphs [26] to [33]), and that fell if we accept Mr Harrison's submissions in respect of that issue. She did not persist with a suggestion that the quality of the work was low.

126. *Decision*: The charges for accountancy services by Martin, Heller were reasonably incurred.

Section 93 costs

127. The Applicants sought to make an objection in relation to the costs to the Respondent of complying with a request for information under section 93 of the 2002 Act.

128. Mr Harrison had been under the impression that this issue had been agreed (and so indicated in his skeleton argument). The Tribunal indicated to the parties that we considered that the costs of complying with section 93 were a matter between the RTM Company and the Respondents, and not a matter upon which we should adjudicate on an application under section 27A of the 1985 Act.

129. Following the hearing, we have reconsidered that conclusion, which may have been based on a misunderstanding of the final accounts document headed "expenses since 29 September 2021".

130. It now appears to the Tribunal that the Respondent sought to charge *the Applicants*, not the RTM Company, with those costs under that final account. If that is so, then the matter is properly something the Tribunal should have considered in exercise of its jurisdiction under section 27A.

131. We have considered how we should proceed in these circumstances. We have concluded that we should first indicate our preliminary view of the question. If the Respondent considers that our preliminary view is wrong, it should make written submissions to that effect, to be received by the Tribunal within three weeks of the receipt of this decision. If, once we receive those written submissions, we consider it is necessary for us to consider submissions from the Applicants, we will give directions to that effect. If no written submissions are received from the Respondent within the time limit, our preliminary conclusions will become final, and we will amend this decision to reflect that.

132. If the parties come to an agreement in respect of the issue, they should both so indicate to the Tribunal, and again this decision will be amended.

133. Our preliminary view is that Parliament has established a code for the right to manage in part 2, chapter 1 of the 2002 Act. That Acts makes

specific provision in section 88 for an RTM Company to be liable for the reasonable costs of a landlord occasioned by the process. It follows, in our preliminary view, that to recover such costs, the landlord should look to the RTM Company under section 88, and not seek to pass those costs on to the tenants under the service charge before the acquisition date. Were it otherwise, the restrictions on costs in section 88(2) and (3) could be avoided by recovering the costs from the tenants under the service charge.

134. It follows that, in the exercise of our section 27A jurisdiction, we should find any charge relating to section 93 costs not reasonably incurred in the service charge.

135. Decision: Our *preliminary view* (see above) is that the charge relating to the Respondent's costs in complying with section 93 of the 2002 Act were not reasonably incurred.

Management fees

136. The management fees for each year under consideration were as follows:

2015/16	£1,092.00
2016/17	£1,152.00
2017/18	£1,212.00
2018/19	£1,176.00
2019/20	£1,238.40
2020/21	£1,248.00
30.09.21 to 10.10.21	£105.00

137. The Applicants argued that the management fees should be reduced in all years to recognise the poor management provided by Eagerstates.

138. The complaints were as follows.

139. Eagerstates overcharged, using contractors with a record of poor performance. In her witness statement, Ms Gething specifically referred to BML and Dove. Eagerstates failed to engage with leaseholders in relation to poor service by contractors and made it difficult to obtain information.

140. The accounts did not comply with appropriate accounting practices, and were difficult to understand.

141. Eagerstates failed to manage the shorthold tenants in flat 4 properly, including violent anti-social behaviour.

142. When money was wrongly paid over to them, they did not return it for lengthy periods. Mr Cooke referred to one case affecting him, and there was also the example of the payment in error by the leaseholders of flat 2 referred to above, albeit after the period covered by the management fees.

143. The high interim demands issued in September 2021 were inappropriate where there were only a few weeks (days, if the year started on 29 September) to run until the acquisition date. The Applicants specifically argued that the attempt to charge major works in that demand was malicious.

144. There was a general complaint that Eagerstates, in the person of Mr Gurvits, would refuse to engage or discuss any issues affecting the property, closing down discussion as a matter of course.

145. Eagerstates undertook unnecessary work and/or performed necessary tasks under the lease too frequently. Mr Cooke, who had acquired his leasehold in 2015, said that the exterior had been decorated twice during that period.

146. Orally, both Applicants indicated that constant conflict with Mr Gurvits affected them emotionally.

147. Mr Harrison responded, first, that the management fee was already at or near the bottom of the normal range. He referred to the agreement between Assethold and Eagerstates, described in the Scott schedule as a sample. That agreement (which is dated 10 August 2020, and relates to the year starting 29 September 2020) expresses the fee as £260 per unit. That fee, multiplied by four plus VAT is the sum set out above for 2020/21.

148. It was not Eagerstates responsibility to control the assured shorthold tenants in flat 4. That was a matter for the landlord.

149. As to the interim demands for 2021/2, Mr Harrison argued that Eagerstates played a straight bat – the only proper approach was for the Respondent to perform its functions under the lease as it stood at the time of the demand. That included the major works to the meter cupboards. If they needed doing, it was right for Eagerstates to include them in the estimate. The Respondent could not know what would become of the RTM Company before the acquisition date.

150. Exterior decoration at the rate referred to by Mr Cooke was not inappropriate. Many leases required exterior decoration every five or seven years. More generally, Eagerstates proactively and properly managed the property during the period, including ensuring a high

standard of compliance with both the lease and statutory requirements. These were not discretionary matter.

151. Aside from the determinations we have made in this decision, we do not think a generalised charge of over-charging has been proven. However, our decisions herein do go some way to undermining a general reputation for proactive propriety. We agree with Mr Harrison that the external decoration referred to by Mr Cooke cannot be criticised, in the terms put.

152. We agree with Mr Harrison that Eagerstates had no locus in relation to flat 4, including controlling anti-social behaviour in the tenant (see below).

153. As to the interim demands for 2021/22, we accept Mr Harrison's overarching argument that it was the right approach under the lease for Eagerstates to make interim demands on the basis of planned expenditure for the whole year.

154. However, in doing so, it was also incumbent on Eagerstates to ensure that it was an appropriate and proportionate plan. The meter cupboard major works, which were carried forward into that plan, following the attempt as an "urgent" additional interim item in the previous service charge year, do not fall into that category. As stated above, we have not been given any reason at all, let alone a reasonable one, for this expenditure. Given the timing, the obviously inappropriate attempt at using the "urgent" interim mechanism, and its repetition in the interim demand for 2021/22, we conclude on the balance of probabilities that it was conceived to punish the leaseholders for initiating the right to mange procedure. It was, as the Applicants allege, malicious.

155. We accept the Applicants' evidence as to the difficulty of engaging with Eagerstates. In nearly all cases, the narrative relating to individual items included problems in communicating with Mr Gurvits beyond the rejection of any objections and a refusal to engage further; and other examples are set out in Ms Gething's uncontested witness statement. These issues do not affect the reasonableness of the contested items, one way or the other, but are relevant to the question of the quality of management.

156. We also accept the Applicants' evidence that Eagerstates have been very slow to return money overpaid. We accept the evidence in relation to the matter involving Mr Cooke. The subsequent issue relation to flat 2 is only of strictly limited significance, given it did not happen during a time reflected in management invoices from Eagerstates, but it has some small value as indicating a propensity that may be relevant in earlier times.

157. While we do not place any great reliance on whether Eagerstates adhered to the specific accounting practices referred to by the Applicants, the documents provided by Eagerstates did not make it at all easy to understand the way in which the service charge was operated year on year. We had a graphic illustration of this in the Tribunal hearing – see paragraph [112] above.

158. As noted above, we agree with Mr Harrison that Eagerstates had no responsibility for managing flat 4. However, it is clear from the agreement provided in the bundle, Eagerstates charged Assethold for management functions as if there were four leasehold properties, not three. None of the functions of Eagerstates as managing agents listed in the agreement in the bundle applied to flat 4. If they did, they could not have been put through the service charge. It is true that the proportions of the total service cost were such that 6% was disregarded, to represent a notional (small) contribution by flat 4. That does not mean that the flat was a party to the service charge in any sense at all. It was (and no doubt remains) appropriate as a forbearance by the landlord to account for the fact that the tenants of flat 4 would use the communal areas. But there was no leaseholder to receive service charge accounts, require section 20 notices, pay ground rent, be subject to the regulations and so on.

159. In short, we have decided, first, that the management services provided by Eagerstates were in some respects deficient and in one respect malicious. Secondly, Eagerstates have overcharged Assethold throughout the period. No doubt that is an issue between Assethold and Eagerstates. But in any event, it is not reasonable for the Respondent to pass on in the service charge an expense for which it has wrongly overpaid.

160. In quantifying what would be reasonable, we have, first, reduced the charge per unit from £260 to £250 for 2020/21, in recognition of the deficiencies we have identified. Secondly, we have recalculated the charges concerned so that they represent three units, not four. We appreciate that the reduction in the basic per unit fee is limited. However, we think it reasonable to suppose that the per unit fee might have been slightly higher, had it properly been charged on the basis of three units. The same reduction pro rata has been made to each previous year.

161. The management fees were not reasonably incurred. The following charges would be reasonable in substitution:

2015/16	£787.50
2016/17	£830.76
2017/18	£874.04
2018/19	£848.07

2019/20	£893.08
2020/21	£900
30.09.21 to 10.10.21	£75.72

Section 94, 2002 Act application

162. The third Applicant, represented by Ms Gethings, applied to the Tribunal under section 94(3) of the 2002 Act to determine the amount of accrued uncommitted service charges payable by the Respondent to the third Applicant.

163. In March 2022, five or so months after the acquisition date, Eagerstates sent interim service charge demands to the leaseholders. The leaseholders of flat 2 paid the demand. The money has not been returned.

164. The third Applicant submitted that that sum in the hands of the Respondent amounted to accrued uncommitted service charges.

165. Mr Harrison submitted that the sum could not be considered a service charge at all. It was wrongly demanded by Eagerstates after it no longer had any role in relation to the service charge; and was paid in error by the leaseholders of flat 2. It was now an issue between those leaseholders and Eagerstates.

166. With some reluctance, we accept Mr Harrison's submission. The situation here, where the service charge demand by Eagerstates has no more validity than had a demand been purported to have been served by any other person, is to be distinguished from the situation in which a party to a lease wrongly demands a service charge, because it is unreasonable in amount, or is not payable under the lease. In the latter case, a service charge demand has been made, albeit one invalid in amount. In the former case, the demand is not a service charge demand at all. No doubt the leaseholders would have a restitutionary claim against Eagerstates, but it does not fall within our jurisdiction.

167. *Decision*: The sum paid to Eagerstates by the leaseholders of flat 2 is not an accrued uncommitted service charge.

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

168. The Applicants applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

169. We agreed at the conclusion of proceedings that we would seek written submissions on whether we should make the orders on delivery of our decision, when our conclusions would be known. Given the procedure outlined in paragraph [131], there remains one potentially open question, but that is a known and limited indeterminacy which should not unduly affect the parties' submissions.

170. The parties should provide written submissions on whether we should make the orders sought within three weeks of the receipt of this decision. Each party should send a copy of their submission to the other, but we do not consider it necessary to ask for responses from either party.

Rights of appeal

171. 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 London regional office.

172. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends final written reasons for the decision to the person making the application. In this case, this decision will be finalised following the conclusion of the procedure outlined in paragraph [131], or notice being given under paragraph [132].

173. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

174. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 18 July 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

> (a) which is payable, directly or indirectly, for services, repairs, maintenance , improvements or insurance or the landlord's costs of management, and
>
> (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose—

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the 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.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in

determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 20B

(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 a demand for payment of the service charge is 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.

Section 20C

(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 tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , 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 Tribunal4 , 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) Where the right to manage premises is to be acquired by a RTM company, a person who is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2) The amount of any accrued uncommitted service charges is the aggregate of—

(a) any sums which have been paid to the person by way of service charges in respect of the premises, and

(b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to **[** the appropriate tribunal **]** [1] to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after

that date as is reasonably practicable.

Schedule 11, paragraph 5A

(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.

…

Proceedings to which costs relate	"The relevant court or tribunal"
First-tier Tribunal proceedings	The First-tier Tribunal