

FIRST TIER PROPERTY CHAMBER DECISION



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

<b>Case Reference</b>	:	<b>CHI/21UG/LSC/2022/0113 and /0009</b>
<b>Property</b>	:	<b>9A and 9B London Road, Bexhill-on-Sea, East Sussex, TN39 3JR.</b>
<b>Applicants</b>	:	Mark Scrivener and Nathan Tudor.
<b>Respondent</b>	:	Assethold Ltd.
<b>Representative</b>	:	Eagerstates (Mr Ronni Gurvits)  Counsel – Tim Hammond.
<b>Type of Application</b>	:	For the determination of the reasonableness of and the liability to pay service charges.: Section 27A of the Landlord and Tenant Act 1985,  For an order limiting payment of Landlord’s costs: Section 20C of the Landlord and Tenant Act 1985, and  For an order under Section 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to Administration Charges.
<b>Tribunal Judge</b>	:	T.Hingston Barrister at Law
<b>Members</b>	:	Carolyn Barton MRICS Tat Wong - Lay member.
<b>Date of Decision</b>	:	12 <sup>th</sup> May 2023

## **Decision of the Tribunal: -**

**The Tribunal was satisfied that the Applicants had raised an answerable case in respect of the service charges during the relevant period (2018 – 2022), in saying that the charges were ‘not reasonably incurred’ and/or the works were ‘not done to a reasonable standard’.**

**The Respondents did not offer satisfactory evidence to show that the service charges were reasonably incurred and/or the works were done to a reasonable standard.**

**In the circumstances it is determined that the service charges recoverable from Mr. Scrivener for the years 2018 – 2022 are limited as follows:-**

**2018 – Gutter cleaning charge of £250 – not payable. Management fee – capped at £500 pa per flat.**

**2019- no ruling as to ‘unreasonable’ charges.**

**2020- £200 for Window cleaning – not payable. £200 for Drain cleaning – not payable. Management fee capped at £ 500 pa per flat.**

**2021- £750 Gutter cleaning and £750 Wastewater pipework cleaning not payable. Management fee capped at £500 pa per flat.**

**2022 – Fire Safety works (£718 and £838.14) not payable. Roof works £3,427.43 not payable. Gutter cleaning £750 not payable. Management fee capped at £500 pa per flat.**

**The service charges recoverable from Mr. Tudor for the years 2021 – 2022 are limited as follows:-**

**2021- £750 Gutter cleaning and £750 Wastewater pipework not payable. Management fee capped at £500 pa per flat.**

**2022- Fire Safety works (£718 and £838.14) not payable. Roof works £3,427.43 not payable. Gutter cleaning £750 not payable. Management fee capped at £500 pa per flat.**

**The calculation of these figures is set out in the ‘Reasons for the Decision’ below.**

## **BACKGROUND**

**1. This matter concerns a property in Bexhill-on-Sea which consists of commercial premises on the ground floor and two flats above. Flat A (first floor) is occupied by Mr Tudor and includes access to the rear garden. Flat B is on the second floor and is occupied by Mr Scrivener. Both flats were sold on 125-year leases which run from the 5<sup>th</sup> of February 2013, and the Applicants purchased the leaseholds in 2021 and 2018 respectively.**

**2. The freehold of the building is owned by Assethold Limited, who are represented by Eagerstates Limited as managing agents. These parties are hereafter collectively referred to as ‘the Respondents.’**

**3.** There are joint Applications from the leaseholders (referred to hereafter as ‘the Applicants’) for determination of payability of and reasonableness of service charges during the years 2018 – 2022, as well as applications for limitation of the landlord’s costs of the proceedings and administration charges.

**4.** There have been a number of directions hearings in the case, with adjournments and time extensions being granted in order to accommodate religious holidays of the Respondents and difficulties experienced by the Applicants (who are preparing the case without legal assistance and representing themselves) in submitting a full bundle of documents.

### **DOCUMENTATION.**

**5.** The Tribunal received a bundle containing 273 pages including copies of the Applications, Statements of Case, photographic and other Exhibits, copies of both the Leases, correspondence and other supporting documents as per the Index.

### **INSPECTION.**

**6.** There was no inspection of the property nor request for the same.

### **HEARING.**

**7.** The hearing took place on the 11<sup>th</sup> of May 2023 via CVP video link. The Applicants and the Respondent’s Counsel Mr. Hammond appeared on the video as directed by Judge Dobson on the 27<sup>th</sup> of March 2023 [paragraph 18 of the Directions, Bundle Page 256/7] but Mr. Gurvits from Eagerstates Ltd. appeared by audio link only.

### **PRELIMINARY MATTERS.**

**8.** Mr. Hammond submitted that the Applicants should not be permitted to put before the Tribunal their ‘Response to the Respondent’s Statement of Case’, with its attached photographs and Freehold Valuation report on the property. He argued that this evidence was served late (on 3<sup>rd</sup> May 2023) and the Respondents had not had a chance to serve evidence and/or call witnesses in rebuttal, to comment on the alleged poor or incomplete workmanship as shown in the Applicants’ photographs.

**9.** Mr. Hammond also stated that the Applicants had changed their case and now appeared to be requesting determinations as to the Right to Manage and Leasehold Enfranchisement. He queried the Tribunal’s jurisdiction to make findings on these issues.

**10.** It was explained to all concerned that there were no applications before the Tribunal in respect of the Right to Manage or Leasehold Enfranchisement (although phrases relating to them had been mentioned in the Applicants’ case) and the Tribunal would not be considering such matters.

**11.** As to the late submission of evidence, Mr. Hammond failed to take account of the fact that the Applicants’ final ‘Response’ could only have been served after the 25<sup>th</sup> of April, which was the extended time granted at the request of his clients for service of their own Statement of Case. The Applicants had in fact served their Response within 5 working days thereafter (3<sup>rd</sup> May), which was unavoidably close to the hearing date.

**12.** The Tribunal determined that the ‘Response’ was essentially along the same lines as the other submissions to date, with the addition of comments on the Fire Safety Report (which they had just received for the first time). The photographs were mainly dated 23<sup>rd</sup> April 2023 and were helpful to the Tribunal, particularly as there had been no inspection. The Applicants had done their best to reply to 69 pages of documentation which they had received from the Respondents late (4.40 p.m.) on the 25<sup>th</sup> of April, and the Respondents had then had 7 working days to consider that reply.

**13.** In the circumstances the Tribunal ruled that the Respondents had not been unfairly prejudiced by the recent service of the documentation and the evidence was ruled admissible.

### **APPLICANTS’ CASE.**

**14.** Mr. Scrivener spoke first on behalf of the Applicants. He relied upon his original submissions on the Application form, the Applicants’ joint Statement of Case, the Scott Schedule and the Applicants’ ‘Response to The Respondent’s Statement of Case’.

He drew the Tribunal’s attention to the dated photographs [Pages 161 – 182 of the bundle] and explained which of those photographs illustrated his points.

Essentially, the Applicants are taking issue with the following elements of the service charge: -

#### **15. Roof works, chimney re-pointing.**

In March 2022 Mr. Scrivener paid £3,677.79 as his one-third share of the cost for roof works. (*Note: this figure included £250 Ground Rent – see Page 267: the net figure was £3,427.43*). His evidence was that he had seen no scaffolding, no workmen on the roof and no sign of anything being done except for a man who went up a ladder and took photos. The Applicant’s photograph of the chimney [Page 176] shows that the chimney clearly has not been re-pointed, and crumbling bricks have not been replaced. Mould was still visible in Flat B [see page 177] after the roof works had supposedly been done, and there was still moss on the roof in April 2023 [see page 178]

**16.** Mr. Tudor had also paid £3,677.79 (including Ground Rent) towards the roof in March 2022. He is a roofing contractor and gave evidence that the roof did not appear to have been cleared of moss [see page 178 as above]. He was unable to comment on whether the roof valleys and gulleys had been repaired, but he had not seen any scaffolding or contractors and as far as he was aware there was no lead flashing which needed doing or had been done. There were no ‘*ridges, verges, valleys or hips*’ that appeared to have been re-pointed, despite the Invoice (‘Paid’) for £1,750 from Management 2 Management for such works dated 9<sup>th</sup> November 2021 [page 122]. He stated that Eagerstates had had a quote for £10,600 for the roof works, which in his view was ridiculously high.

The Applicants contend that the costs for these works have not been ‘Reasonably incurred’ because they either have not been done at all, or have not been done to a reasonable standard.

### **17. Electric meter cupboard and Fire Alarm/Safety works.**

Mr. Scrivener had received a demand for £719 towards the cost of the meter cupboard works, and another demand [Page 263] for £838 for the 'Fire Alarm' works, but nothing had been done. For example the photos in the bundle [pages 161 onwards] show that there still (as of April 2023) is no fire-proof door on the meter cupboard, the Fire exit door still requires a key to open it, and the area around the lock of the entrance door remains badly damaged.

Mr Scrivener stated that he had asked on several occasions (by email and verbally) to see a copy of the Fire Safety Report (dated February 2022) which had highlighted the need for such works, but he had had no response at all from Eagerstates.

Instead he received a threatening 'Notice of Proceedings' from them dated 2<sup>nd</sup> August 2022 [Page 262], demanding:

£719.40 for the fire cupboard, and

£120 for 'our costs' :

Total £ 839.40. [Page 260]

Both Applicants had requested sight of the Report but it had not been disclosed to them until 25<sup>th</sup> April 2023.

**18.** On the 10<sup>th</sup> of August 2022 Mr Scrivener received a so-called 'Statement of Account' from Eagerstates [Page 261], by which time the figure owing had increased to £2,727.54 including '*administration costs, DRA referral fee and DRA recovery fee.*'

**19.** Finally he received a 'Letter before Action' dated 12<sup>th</sup> August 2022 from the DRA (Debt Recovery Agency) [Page 260], demanding that he pay the £2,727.54 within 7 days for the '*meter cupboard works, fire alarm works and associated costs*' or they would begin proceedings for possession of his flat.

**20.** Mr. Tudor had received similar demands and letters from Eagerstates. The 'Statement of Account' sent to him on 8<sup>th</sup> August 2022 [Page 267] stated that he owed a total of £5,667.22 including the 'admin. Costs' and DRA fees.

**21.** The Fire Safety Report [Pages 65-114] was eventually provided to the Applicants with the Respondent's Statement of Case on the 25<sup>th</sup> April 2023. It identifies numerous fire hazards, some of which are 'Priority 3' hazards requiring urgent action within 2-3 months. The Applicants state that it is clear that still *none* of these matters have been addressed 15 months after the report, but that if they had seen a copy of the report from the outset they would have been happier to pay the charges for necessary works.

The Applicants therefore argue that these costs - demanded without proper explanation for works which have not been done - cannot be said to have been 'Reasonably incurred', and it follows that the Administration charges and incidental costs associated with them (including DRA fees) were not reasonably incurred either.

### **22. Soffits and fascia boards**

The Applicants produced photos [pages 176,179 and 180] showing soffits and fascia boards which appear to be either very dirty UPVC or timber in need of repainting.

They stated that as far as they were aware cleaning and checking of these areas had not been done. They pointed out that access to the back of the building can only be gained via themselves, and no-one had contacted them in order to arrange such access.

It was argued that service charge costs for these works were not 'Reasonably incurred'.

### **(Ironwork, porch and handrail)**

*Note: Mr. Tudor gave evidence that he had received a bill this year (2023) for pointing works to the rear house wall (unnecessary in his view) and for painting of 'ironwork, porch and handrail'. He stated that the property has none of these features. Any costs for the year 2023 – 2024 are not within the term of this Application, but may be judged according to the same criteria as those for the years under consideration by the Tribunal.)*

### **23. Guttering and rainwater goods**

The Applicants gave evidence that despite being charged for cleaning of gutters and down-pipes etc. (e.g. £250 in 2018-2019 [Page 49] and £750 in 2021 [Page 48]), no work appeared to have been done in recent years. Mr. Scrivener said that there had been blocked gutters with plants growing in them during the whole of his residence from 2018 onwards [photo Page 170]. However, he confirmed that in recent weeks a contractor had attended and succeeded in cleaning out the gutters.

Mr. Tudor stated [Page 22] that he had been charged £750 for 'Cleaning of rainwater goods and gutter repairs' in 2021, but a workman had visited and was unable to reach the gutters or complete the work.

It is argued that these costs were not 'Reasonably incurred': the works either were not done at all or were not done to a reasonable standard.

### **24. Waste water/drainage works**

Mr. Tudor and Mr Scrivener stated that they had been charged £200 both in 2021 and in 2022 for 'Drainage cleaning' [Pages 48 and 22], but they did not know what was entailed in this and as far as they knew it had never been done. In 2021 there was also a charge for 'Waste water pipe-works' [Mr. Tudor's Application page 22], but he had never known anyone attend the building for this purpose.

The Applicants queried whether these costs were 'Reasonably incurred'.

### **25. Window cleaning**

In 2021 and 2022 there were demands for £200 for 'Window cleaning'. [Page 22].

The Applicants stated once again that access to the rear of the property could only be gained through them, and no-one had contacted them (from 2018 to 2022) to make arrangements. As far as they were aware the work - at the rear of the house at least - had not been done during the relevant period.

The Applicants question whether these costs were 'Reasonably incurred', as the work was either partially done (on the front of the building only) or not done at all.

### **26. Boundary wall.**

The Applicants drew our attention to photographs at Pages 171-175 of the bundle. The 'boundary wall' appears to be brick, covered in old rendering and painted white. The small areas which appeared to have been 'patched' roughly with cement or mortar bear no relationship to the 'Paid' Invoice from Management2Management [Page 123] for supposed work: 'Rake out all loose and defective mortar joints and

*damaged brickwork of the left boundary wall and remove all vegetation growth and decorate all previously decorated areas in a masonry paint.*' The bill was for £1,000 but the photographs show large areas in very poor condition with cracks, holes, peeling paint and plants growing through.

The Applicants dispute that these costs were 'reasonably incurred': the works were cursory and unduly expensive.

### **27. Insurance premium and broker's fees**

The Applicants challenged the level of costs for Insurance premium and broker's fees:-

£1,585 in 2018-2019

£1,662.03 in 2019-2020 [Mr. Scrivener's Application Page 48],

£1,749 in total in 2021 and

£1,923.98 in 2022 [Mr. Tudor's Application page 22].

In 2021 there was also an additional £990 for '*Surveyors for Insurance purpose*' [Page 22]

The Applicants queried whether these costs were 'Reasonably incurred.'

### **28. Accountant's fees**

In 2018 Mr Scrivener was charged £180 for an '*Accountant's fee*' [Page 49].

In 2019 he was charged £192. [Page 48].

In 2020 the '*Accountant's Fee*' was £204 [Page 48].

In 2021 it was £234 [Page 22], and in

2022 it was £264 [Page 22].

The Applicants queried whether these costs were 'Reasonably incurred.'

### **29. Surveyors' fees.**

Both Applicants referred to the '*Surveyors' Fees*' in 2021. There appear to have been two charges:-

one for £990 '*for insurance purpose*' (See point 27 above) and

one for £558 '*for preparing preventive maintenance*' [Page 22].

The Applicants queried whether these costs had been 'Reasonably incurred.'

### **30. Management fees**

**(a)** Both Applicants gave examples of occasions when the management company had failed to communicate with them, had failed to answer queries, and had failed to deal promptly and efficiently with issues. In some cases 'Red letters' were sent without any previous demand having been received. They conceded that they *thought* that Eagerstates had followed the correct statutory procedures for consultation (under Section 20 of the Landlord and Tenant Act 1985) before undertaking major works, but they did not fully understand the process. They pointed out that they were not really in a position to nominate contractors, apart from the Fire Cupboard works where they had nominated a particular company and the Respondents had instructed that company, but the work still had not been done. The Applicants' overall impression was that the property was not properly managed and the company treated them with little respect or consideration. No-one from Eagerstates had contacted them either to say when workmen might be attending or to make arrangements for access. In the case of the Fire safety works, they submitted that if the Fire Report had been disclosed to them as requested there would have been no need to instruct the DRA and incur further expenses.

**(b)** Mr. Scrivener accepted that eventually Mr. Gurvits had communicated with him about the roof works by email in June 2022 and sent photographs of *'the works carried out so far...'* [Emails exhibited at Pages 116-115]. Photographs at Page 121 (attached to this email?) appear to show tidy valleys and gulleys.

Mr. Scrivener had asked what they were paying for because they had seen no scaffolding and no workmen, and no contractor had ever attempted to make contact with him.

On Page 115 Mr. Gurvits' email (16<sup>th</sup> June 2022) stated that the further roof works involving scaffolding were ready to start, subject to gaining access. The Applicants' evidence was that no further works had been done to date.

**(c)** The Applicants submitted that in the circumstances the management charges: - £858 in 2018-2019 [Page 49] £882 (plus an additional *'Management fee'* of £864(?) in 2020-2021 [Pages 22 and 48], and £889.20 in 2022 [Page 22] were excessive. The service from Eagerstates was poor and the costs were therefore not *'Reasonably incurred'*.

### **31. Administration Charges.**

Administration charges are defined in Part 1 (1) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as:-

*'...An amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -*

*(a) for or in connection with the grant of approvals...*

*(b) for or in connection with provision of information...*

*(c) in respect of a failure by the tenant to make a payment by the due date to the landlord...*

*(d) in connection with a breach ( or alleged breach) of a covenant or condition in his lease'.*

The Applicants submitted that they had always paid their service charges when demanded in the past, they were not in arrears or in breach of covenant and there would have been no need for involvement of the DRA or for the current proceedings if the Respondents had treated them fairly and replied to their requests for information.

In the above circumstances the Applicants argued that the Administration charges (e.g. £120 for *'our costs'* in connection with the Fire cupboard *'Notice of Proceedings'* [Page 262], and £360 in 2022 for *'Debt recovery'* [Page 22]) were not *'Reasonably incurred'*.

### **32. Timing of demands.**

It was further submitted that under Clause 4(4) of the Lease the Applicants had to pay service charges *'in a manner provided for in the Fifth Schedule'*, i.e. on 1<sup>st</sup> April and 1<sup>st</sup> October each year, and therefore the demands for payments between those dates were invalid.

## **RESPONDENT'S CASE**



**33.** The Respondent's short, formal 'Statement of Case' [Page 63 of the bundle] was signed by Mr. Gurvits, although he stated that he was not the only person from Eagerstates who dealt with the subject property. The Statement is undated and begins by incorrectly asserting that the Applicants '*...have failed to comply with the Tribunal's Directions as they have not completed the Scott Schedule...*'. In fact the Scott Schedule [Page 52 et seq] was served in time as directed and is completed with the Applicants' information in the first two columns, but there are no 'Comments from the Respondent' in reply.

**34. Roof Works.**

In the 'Statement of Case' Mr. Gurvits confirms that the roofing repair works have only been '*...part carried out.*' He said in evidence that costs were sometimes charged on an 'estimated' basis, as shown by the £7,611 charge for '*Boundary wall, roof and chimney works*' in the 'Service Charge Account' dated 6<sup>th</sup> March 2023 [Pages 269 and 270].

The Respondent's case was that the contractors had to date only dealt with the areas of the roof that they could access without scaffolding. He could not explain why no-one had succeeded in contacting the residents as yet to arrange access.

**35.** The Respondents attached a number of photographs [Pages 121-132] to their Statement of Case, but the photographs did not have dates and were not indexed or explained separately.

**36.** The Respondents exhibited [Page 122] a Management2Management 'Paid' Invoice (dated 9/11/21) which referred to cleaning, fungicidal treatment and maintenance of all areas of the roof at a total cost of £1,750, but the various photographs did not appear to show all the different types and areas of roofing and Mr. Gurvits conceded that there were still works outstanding.

**37. Chimney repairs.** When asked about the Chimney repairs, Mr. Gurvits told the Tribunal that he believed that '*works which need access from the rear*' were '*on the agenda*' and that they fully intended to complete them. He assured the Tribunal that he would get in touch with Management2Management in order to arrange this. No explanation was given for that contractor's 'Paid' Invoice (again dated 09/11/21) [exhibited at Page 120] which referred to repointing the chimneys, replacing '*spalled or crumbling bricks*' and ensuring the whole was '*secure and weatherproof*' at a cost of £1,950.

**38. Fire 'Cupboard' Works.**

Mr. Gurvits gave evidence - both in his statement [Page 63] and at the hearing - that the Fire Safety works had to be dealt with following the Report in February 2022, and a proper Section 20 consultation was carried out. The Applicants had nominated a firm called Astletts and they were instructed to do the work but had not done so despite being chased several times. The estimate from Astletts was £1,138.79. Mr. Gurvits argued that the Applicants should be 'estopped' from saying that the works were unnecessary because they had nominated the contractors to carry them out.

**39. Timetable for Fire Safety Works.**

No evidence was provided as to any Action Plan in respect of the remaining works listed in the Fire Report. Mr. Gurvits said that he would 'chase up' alternative contractors, and he accepted that the matter should not remain outstanding 15

months after the Report. Mr. Gurvits also stated that there had been similar Fire Health and Safety surveys in 2017 and 2020, but no documentary evidence of this was produced. He agreed that the outstanding works meant that there were continuing potential safety risks to the residents in the building, and he did not challenge the Applicants' evidence that none of the 'Fire safety' works had yet been carried out.

#### **40. Soffits and fascia boards.**

The Respondents also exhibited a further 'Paid' Invoice from M2M (dated 9/11/21) for cleaning of UPVC soffits and repainting of '*timber elements*' at a cost of £1,750. [Page 119]. No explanation was given for the dirty UPVC soffits shown in the Applicants' photographs at Pages 179-182.

Again it was submitted by Mr. Hammond that the Applicants had only been charged for works which had actually been done.

#### **41. Guttering.**

Mr. Gurvits gave evidence that there had not been a charge for regular gutter cleaning every year. When asked if the photos of gutters at pages 130-132 were 'before' and 'after' photos, he stated that some were taken in 2022 and some in 2023. He thought that the gutters were cleaned every 6 months, but was unable to comment on Mr. Scrivener's evidence of long-term blockages and plants growing in the guttering.

#### **42. Drainage/pipe-works.**

No comment was made nor evidence given by the Respondents in respect of these items in the accounts

#### **43. Window cleaning**

The Respondent's Statement of Case (paragraph 4) states that '*...only accessible windows would be cleaned.*' It was said that they did try and contact residents to arrange access, but there had in fact been no charge for window cleaning in the 2021/2022 accounts. The Respondents exhibited a number of photographs, including one of a van parked outside the front of the property advertising 'Window cleaning' and 'Guttering' amongst other things. There appeared to be a telescopic device which was cleaning all the windows both front and back, but these photographs were undated and no explanation was given.

It was submitted by Mr. Hammond that the Applicants had only been charged for works which had actually been done.

#### **44. Boundary Wall.**

When referred to the photographs of patching to the boundary wall [Photos on Pages 171-174] Mr. Gurvits said that he was not aware of this issue until the hearing today. He did not know who was obliged to maintain the wall under the Lease, and did not comment on the Management2Management 'Paid' Invoice (also dated 9/11/21) for £1,000 for Boundary wall repairs. [Page 123].

#### **45. Insurance.**

Mr. Hammond commented that the Applicants had not put forward any comparable evidence of premiums or broker's fees.

**46. Accountants and Surveyors.**

No comment was made on behalf of the Respondents as to the appropriate level of Accountants and Surveyors' fees.

**47. Management.**

Mr. Gurvits confirmed that Eagerstates manage over 400 properties in London and the South of England. They have had responsibility for this particular building since 2016, but he has never been there. He stated that he did generally reply to correspondence and to requests for information, but he could not explain why the Fire Safety Report had not been disclosed to the Applicants: he did not recall the request.

**48.** The 'Management fees' are a fixed price per unit, as Mr Gurvits said that previous Rent Tribunals had not approved of calculating the Management figure by reference to annual expenditure.

In terms of service charge costs and demands, he stated that payments both for actual outgoings and for estimated expenses were collected each year and were then properly receipted and credited where appropriate. However, there was no 'reserve' or 'sinking fund' for this property despite the provision for such in Clause 6 of the Lease [Page 196.]

**49.** As to contact with tenants, Mr. Gurvits gave evidence that they *had* contacted the residents about access for works to be done, despite the residents' evidence that they had not done so.

**50. Administration Fees.**

On behalf of the Respondents it was submitted that such charges (both of Eagerstates themselves and of the DRA, whose Invoices were at Pages 117 and 118) were recoverable under Clause 3(9) of the Lease. Mr. Hammond argued that as the Section 20 consultation procedure had been followed it should not matter whether the Applicants had seen the Fire Safety Report or not.

**51.** It was further submitted that no Order should be made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 reducing or extinguishing the Applicant's liability to pay Administration charges, because the costs had been legitimately incurred and it would not be 'just and equitable' to make such an order.

**RELEVANT LAW.**

See attached Appendix.

**DETERMINATION.**

*(Note: The Tribunal made its determinations in this case without having sight of full Service Charge Accounts for the relevant years 2018 – 2022, as neither party*

*had supplied them. The Respondents complained that the Applicants had not supplied a complete and coherent bundle, but they failed to take account of their own comparatively extensive experience of Tribunal proceedings and did not adduce the evidence themselves in support of their case or volunteer to create the bundle, even though they were better placed to do so.*

*Nevertheless the Tribunal found that there was sufficient evidence to make the requisite findings, as set out under the headings below.)*

## **52. Roofing and Chimney works.**

The Tribunal found that the Applicants' evidence was coherent and credible, and they had done their best to present their case as to payability of service charges. In respect of the roof and chimney works they submitted that very little work had been done for the price charged, and in respect of the chimney at least the works which had been paid for in the Invoice at Page 120 (£1,950 for re-pointing etc.) had either not been done at all or had been done to a very poor standard. [See photograph Page 176].

Similarly an Invoice [Page 122 £1,750] had been paid for the cleaning down of moss and general repair and maintenance of the roof(s), but the recent photographs at Page 178 show moss apparently undisturbed.

### **Decision-**

**The Tribunal found that the costs for roof and chimney works in 2022 as follows: -**

**£3,427.43 [shown as 'received' on the 25<sup>th</sup> of March 2022, Page 267] were not payable because although the contractors had apparently been paid in full, the works had only been partially completed and had not been done to a reasonable standard.**

## **53. Fire Safety works and meter cupboard.**

The Tribunal was very concerned that urgent works still remained outstanding 15 months after the Fire Safety Report, and that none of the items in the detailed assessment – even those highlighted in red as 'Legal Non-Compliances' – had been dealt with. The Respondents simply asserted that the tenants' nominated contractor had failed to carry out the works, but this was not an adequate excuse.

**54.** It was noted that the Report stated [Page 72 of the bundle] that - '*A risk assessment re-inspection program of one year has been applied until the hazards and non-compliances identified within this property have been actioned with suitable records kept and continuously maintained.*' At Page 74 it is stated that '*Non-compliances require immediate action.*'

Any extra costs as a result of the landlord's failings in this regard may not be considered 'reasonably incurred' if they are passed on to the tenants in future.

**55.** There was no direct or documentary evidence of previous Fire Safety assessments as referred to by Mr. Gurvits, and it could be seen from the photographs [Pages 165/166] that the meter cupboard and fire cupboard had apparently never been correctly constructed. It appeared therefore that failures to comply with fire precautions had been ongoing prior to 2022. Similar hazards to the main door lock and Fire door lock were also noted, indicating that poor management had subsisted for some time.

**56.** Under Section 22 of the Landlord & Tenant Act 1985 (as amended) the tenant (in this case the Applicants) can require the landlord in writing to afford him reasonable facilities for inspecting the ‘*accounts, receipts and other documents*’ which support the Service charge summary, and for taking copies or extracts from the same. By Section 22(5) the landlord is obliged to comply with such a request. In this case the evidence was that the Applicants had quite properly and reasonably asked to see the Fire Safety Report, but the landlords had failed or refused to make it available to them.

**57.** Unless the landlord has a ‘reasonable excuse’ for not complying with such a request, he is potentially committing a summary offence under Section 25 of the same Act.

**Decision-**

**In the particular circumstances the Tribunal found that the costs of £719.40 and £838.14 in respect of meter cupboard and fire alarm works, which appeared on the service charge accounts sent out in August/September 2022 [Pages 267 - Mr. Tudor at Flat A, and 261 - Mr. Scrivener at Flat B] were not ‘Reasonably incurred’ and are therefore not payable.**

**As a result of the above finding it follows that the other items on the same Statements of Account, which arose from efforts to enforce the debt, were not reasonably incurred either and are therefore not payable**

**These are listed below: -**

**Mr. Tudor:**

<b>Notice of proceedings</b>	<b>£120.00</b>
<b>Admin. Costs</b>	<b>£360.00</b>
<b>DRA referral fee</b>	<b>£216.00</b>
<b>DRA correspondence fee</b>	<b>£474.00</b>
<b>DRA lender correspondence</b>	<b>£630.00</b>

**Mr. Scrivener:**

<b>Notice of proceedings</b>	<b>£120.00</b>
<b>Admin. Costs</b>	<b>£360.00</b>
<b>DRA referral fee</b>	<b>£216.00</b>
<b>DRA correspondence fee</b>	<b>£474.00.</b>

**58. Soffits and fascia boards etc.**

The Tribunal accepted the Applicants’ evidence that the UPVC soffits had not been cleaned and that there appeared to be few (if any) areas of timber that had required repainting. The recent photographs at Pages 176-182 show that, if the works were done at all in 2021/2022, they were not done to a reasonable standard.

**Decision-**

**No evidence was produced by either party to show that costs for these works (as per the ‘Paid’ Invoice at Page 119 for £1,750) had been added to the Service charges. Although it was certainly arguable that such costs were not ‘reasonably incurred’, it appeared that in this instance Mr. Hammond was correct in saying that the tenants had not been charged for works which had not been done. No decision was required.**

**58. Guttering/rainwater goods.**

The Tribunal accepted the Applicants' oral and photographic evidence that the gutters had not been cleared until 2023. No invoices for such works done during the relevant period were produced by the Respondents .

**Decision-**

**The charges of £250 in 2019 and of £750 for cleaning of gutters and pipes in 2021/2022 related to costs which were not 'Reasonably incurred', because the work was not done at all at that time. These sums are therefore not payable.**

**59. Drainage/ waste-water pipe cleaning.**

The Applicants gave evidence that as far as they were aware, no drains had been cleaned and no-one had attended the property for that purpose in 2020-2021 (£200 charged – Pages 22 and 48) or in 2021-2022 (£750 charged – Pages 22 and 48). The Respondent Landlord did not produce any evidence that the works had been done or invoiced.

**Decision:**

**The costs could not be said to have been 'reasonably incurred' because there was no evidence that they had been incurred at all. The Tribunal therefore determined that these sums are not payable.**

**60. Window cleaning.**

The Applicants had been charged £200 for window cleaning in both 2021 and 2022, but they stated that their windows had not been cleaned at that time. The Respondents produced photographs which appeared to show recent cleaning of windows both at the front and back of the building, but no dates were given and there was no evidence to satisfy the Tribunal that the works had been done in 2021 or 2022.

**Decision-**

**Accordingly, it is determined that the costs were not 'Reasonably incurred' and are not payable.**

**61. Boundary wall.**

In both the Leases of Flats A and B, the Landlord covenants under Clause 5(5)(a) to carry out the services and other matters as specified in the Fifth Schedule.

**62.** In the Fifth Schedule at Clause 1(9)(a) the Landlord is obliged to maintain and repair the '*...boundary and other walls...except those parts the repair of which is the responsibility of the tenant...*'

**63.** In Mr. Tudor's Lease for Flat A , in the First schedule Paragraph (g) at Page 200, it is stated that the 'Demised premises' includes all the fences and walls marked with an inward 'T' on the Plan [at Page 215] save for those which belong to neighbouring properties. It therefore appears that Mr. Tudor in fact has responsibility for maintaining the 'left' boundary wall which had been so badly patched and for which the Landlord had paid £1,000 [Invoice at Page 123].

**Decison-**

**If any of this cost was passed on to either of the tenants, then it is not payable because it was not 'Reasonably incurred'.**

**64. Insurance – premium and broker's fees.**

The Applicants did not provide a breakdown of the total insurance charges for each relevant year. No comparable evidence was put forward by them and they were not able to say with confidence that these costs were unreasonably high.

**65.** Under the lease the Landlord/Respondent is required to arrange suitable insurance and can recover costs of the same by way of service charges. The Tribunal would expect a competent manager to investigate alternative insurers every three years or so to find appropriate cover at a competitive price, but we had no evidence from either side. It was not clear whether the property was insured under a 'block' insurance policy, or what were the implications of having commercial premises on the ground floor.

**Decision-**

**On the evidence before the Tribunal it was not possible to conclude that the insurance charges were 'unreasonable' in any way, and therefore the sums remain payable.**

**66. Accountants-**

There was no comparable evidence submitted by either side as to reasonable accountant's fees. The Respondents are entitled to employ accountants under the terms of the Lease and the costs can properly be recovered by way of service charges.

**Decision-**

**The Tribunal found that the Accountancy fees which are listed on the service charge accounts appeared reasonable for this type of property.**

**67. Surveyors.**

The same considerations apply as in paragraph **66** above.

**Decision-**

These sums remain payable.

**68. Management.**

The Applicants contended that the Management fees were excessive, although no comparable evidence was put forward. The Respondents did not produce any breakdown of costs or evidence to justify the management fees, but the Tribunal used its own knowledge and experience to consider this particular element of the service charge costs.

**69.** Overall, the Tribunal found that the management of this property had not been of a reasonable standard during the relevant period. The Management company are not local and the personnel dealing with the building often did not visit and were not familiar with the area or the property. Communication with the tenants was poor, maintenance of the building was not well-managed and in some instances contractors were not chased effectively, even for urgent fire safety works. Some Invoices were paid even though works had not been completed or done properly, and charges were made and sometimes enforced without proper procedures being followed. Despite provision in the Leases (Fifth Schedule Clause (9)(n), Page 209) for a 'reserve fund' of some kind for future expenditure, no such arrangement was put in place. Some of the repair bills were substantial and service charge demands fluctuated as a result.

70. There is some confusion as to what was charged in each of the relevant years. In the year 2018-2019 Mr. Scrivener's share of the Management Fee was £858 [Page 49].

In the year 2020-2021 there appear to be two separate figures, for £871.20 and £864 [Mr. Scrivener Page 48] or £882 and £864 [Mr. Tudor Page 22]. No explanation is given for these figures.

In the year 2021-2022 the fee is recorded as £882 [Page 48] or £889.20 [Page 22].

**Decision-**

**The Tribunal determines that the Management Fees should be capped at a maximum of £500 per flat for each year during the relevant period.**

**71. Timing of Service charge Demands.**

The Applicants argued that the Landlord could not just demand payments at any time in the accounting year, and that service charges were only payable on the 1<sup>st</sup> of April and the 1<sup>st</sup> of October each year as per Clause 4(4) of the Lease. However, the Lease does give the Landlord permission and absolute discretion to demand, at any time during the Term, such sums as may be needed to meet future service expenses etc. [Clause 1(9)(n) of the Fifth Schedule, Page 209.]

**72. Limitation of Landlord's Costs of Proceedings – Application under Section 20C.**

**Given the Tribunal's findings as to the Management of the property, it is determined that it would not be just and equitable to allow the Landlords to recover the costs of these proceedings from the tenants by way of service charges. It is ordered that none of the Respondent's costs of the proceedings are to be regarded as 'relevant costs' to be taken into account in determining the amount payable.**

**73. Application for limitation of Tenant's liability to pay the administration charges. (in respect of the DRA and litigation costs.)**

The Tenants seek an order limiting their liability to pay Administration charges in connection with their alleged failure to pay the service charges to the Landlord in due time.

Mr. Hammond argues that it would not be just and equitable to penalise the landlord in this way when the tenants had caused delays in the proceedings and their case had been far from clear from the outset.

**Decision - The Tribunal finds that the tenants were justified in delaying payment of the charges for 'Fire Safety Works', and therefore they should not be liable to pay the £360 administration costs arising from their refusal.**

Tribunal Judge Tessa Hingston  
June 2023.



## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.