



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

**Case reference** : **LON/00AY/LSC/2022/0147**  
**Flats 1, 2, 3 & 4**  
**32 Acre Lane**  
**London SW2 5SG**

**Property** : **And**  
**Flats 1, 2 & 4**  
**18A Trinity Gardens**  
**London SW9 8DP**

**Applicants** : **(1) Suwanee (UK) Limited**  
**(2) Melprop Limited**  
**(3) Emmet Gracie**  
**(4) Laura & Hannah Sainty**  
**(5) Juliet Bullick**

**Representative** : **Mr Andrew F Brooke (Counsel)**  
**9 Stone Buildings Chambers**  
**Lincoln's Inn, WC2A 3NN**

**Respondent** : **Assethold Limited**

**Representative** : **Ms Ceri Edmonds (Counsel)**  
**Tanfield Chambers**  
**2-5 Warwick Court, WC1R 5DJ**

**Type of application** : **Determination of the reasonableness of,**  
**and liability to pay, service charge.**

**Tribunal members** : **Mr I B Holdsworth FRICS MCI Arb**  
**Mr Appollo Fonka FCIEH**  
**Ms Jayam Dalal**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **7<sup>th</sup> July 2023**

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## DECISION

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### **Decisions of the Tribunal**

- a. The Tribunal determines that the service charge demands for 2020-21 and 2021-22 service charge are invalid and not payable.
- b. The Tribunal determines that the ad hoc service charge demands for 2020-21 and 2021-22 service charge are invalid and not payable.
- c. The Tribunal determines that the Insurance Rent charges made through service charge demands for 2020-21 and 2021-22 service charge are invalid and not payable.
- d. The sum of £15,144.06 of surplus service charge funds transferred to the Respondent at purchase should be returned to the Applicants.
- e. A schedule at Appendix B lists the reasonable service charges for service charge years 2020/21 and 2021/22.
- f. The Tribunal make a s.20C order under the provisions of the LTA 1985 and paragraph 5A of Schedule 11 of the 2002 Act application.
- g. The Tribunal awards the Applicants a sum of £6,019.92 plus VAT, as Rule 13(1)(b) costs due to the unreasonable behaviour of the Respondent. This award is made under the provisions of Rule 13 of the Tribunal Procedure (First Tier Tribunal Property Chamber) Rules 2013 and Practice Directions ('**Tribunal Rules**').

### **1. The application**

- 1.1 The Applicants sought a determination pursuant to s.27A of the Landlord & Tenant Act 1985 ('the 1985 Act') and Schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('the 2002 Act'), as to the amount payable as a service charge and the reasonableness of the administration charges for the service charge years 2020/21 and 2021/22. They also applied for a s.20C Order under the provisions of the 1985 Act and made a Rule 13 application dated 12 May 2023 in respect of the extra costs incurred due to the Respondent's unreasonable conduct.
- 1.2 The Applicants made an application to Tribunal dated 29 April 2022, the initial Applicant being Mr Patel, Director of Suwanee (UK) Limited. He was subsequently joined by the other 4 applicants through an application made on 22 May 2023.

- 1.3 The Tribunal has issued seven Directions in this matter. These Directions have sought to secure sufficient disclosure by the Respondent to provide adequate information for the fair and reasonable determination of the application. The number of Directions is explained in part by failure by the Respondent's repeated failure to comply.
- 1.4 An Order for disclosure was made on 17 August 2022, a case management hearing was held on 15 September 2022 and a further case management hearing was held on 8 January 2023. The final Directions issued by Tribunal are included in pp84-91 of the bundle and identify the following issues to be determined by Tribunal, namely:
- a) The validity of the S20 major works consultation procedures.
  - b) The payability and reasonableness of charges amounting to £14,686.56 for service charge year 2020/21 and £37,754.79 in year 2021/22.
  - c) The allocation and use by the freeholder of £15,144.06 of funds transferred from the previous managing agents at purchase.
  - d) whether an Order under s.20C of the 1985 and/or paragraph 5A of Schedule 11 to the 2002 Act should be made.
- 1.4.1 A further application was made on 12 May 2023 to seek reimbursement of the Applicants Tribunal fees. Under this application the Applicants also sought an Order under Rule s.13(1)(b) Tribunal rules in respect of the extra costs incurred due to the unreasonable behaviour of the Respondent.

## **2. The Hearing**

- 2.1 The Applicants were represented by Mr Brooke, Counsel from 9 Stone Buildings and the Respondent by Ms Edmunds, Counsel from Tanfield Chambers. The Tribunal was told that Mr Gurvitz (Director of Assethold Limited) was unable attend due to difficulties at his business, caused by staff absence.
- 2.2 Mr Patel and Ms Gibbons (a paralegal from Gregsons Solicitors) attended as observers. Ms Sainty attended the Hearing as a witness but was not called to give evidence.
- 2.3 The Hearing was held at Alfred Place and all main parties attended in person.
- 2.4 None of the parties requested an inspection of the Property and the Tribunal did not consider one was necessary, nor would it have been proportionate to the issues in dispute.

## **3. Issues in dispute at Hearing**

- 3.1 Mr Brooke addressed the Tribunal about the issues in dispute. He referred the Tribunal to section 6 of his skeleton argument, which listed seven

items in dispute. He explained the Applicants did not dispute the s.20 consultation procedures and expenditure made by the Respondent. He said that the issues in dispute were as follows:

- a) Whether the 2021/22 service charge had been correctly calculated and demanded, in view of the unaccounted for sums of £15,144.06 surplus funds handed over by the previous owner of the freehold, to the Respondent at the time of the freehold transfer.
  - b) Whether the 2020/21 and 2021/22 service charges were correctly calculated and demanded, since they included an insurance premium charge which Mr Brooke alleged was not allowed under the terms of the lease.
  - c) Whether the incurred and actual portion of the 2020/21 and 2021/22 service charges demanded before the end of the service charge year were correctly demanded.
  - d) Whether the 2020/21 service charges were correctly calculated since they included sums incurred by the previous freeholder before the 2020/21 service charge year.
  - e) Whether certain ad-hoc demands, purporting to be for service charge, were payable as service charge in accordance with the lease.
  - f) In respect of specific items in the 2020/21 and 2021/22 accounts, whether these were reasonably incurred.
  - g) An application for an Order under s.20C of the 1985 Act and a rule 13 Costs Award.
- 3.2 The Tribunal had considered the number of relatively small sums in dispute, as shown in the submitted Scott schedule (p134 of the bundle). The Tribunal directed Counsel to discuss whether these small charge items in dispute could be agreed prior to the commencement of the full Hearing. After a short recess in which Counsel discussed settlement only one item was removed from the schedule, namely, the BT final bill.
- 3.3 The Tribunal asked Counsel to jointly explain their understanding of the relevant lease clauses at the outset of the Hearing. This was done and was helpful to Tribunal in their determination.

#### **4. The property**

- 4.1 The property is a two-storey building formed from the conversion of former commercial buildings. There are two blocks to the property, known as 32A Acre Lane, SW2 5SG and 18A Trinity Garden, SW9 8DP. The two blocks contain eight self-contained flats and together form the property.
- 4.2 Until 23 July 2020 the freeholder of the premises was Redpoint Limited with the managing agents Goodsir Commercial Limited. On 23 July 2020 the Respondent, Assethold Limited acquired the freehold and has

been managing the property through its associated company Eagerstates Limited.

## **5. The law**

5.1 The relevant legal positions are set-out in the Appendix A to the Decision.

## **6. The lease provisions**

6.1 The bundle contains two sample leases, namely:

6.1.1 A lease for Flat 4, 18A Trinity Gardens (p449 of the bundle).

6.1.2 A lease for Flat 3, 32A Acre Lane (p482 of the bundle).

6.2 It was agreed by Counsel that these two sample lease reflect the covenants set-out in all leases at the property.

6.3 The lease therefore taken as the example lease by Counsel what that relating to Flat 4, 18A Trinity Gardens.

6.4 Counsel referred Tribunal to the following specific clauses as relevant to determination of the matters in dispute:

6.4.1 By clauses 1.1 and 5 and paragraph 2 of Schedule 4, the Applicants covenant to pay service charges on an interim basis on 1 April each year, as an estimated service charge.

6.4.2 At Clauses 1.1 and 6.1 and paragraph 4.1 of Schedule 6 the Respondent is to send an estimate of the service charge expenditure *'before or as soon as possible after ...'* the start of the service charge year.

6.4.3 Clause 5 and paragraph 2.3 of Schedule 4 the Applicants *'covenant to pay on demand any shortfall between the estimated and actual service charge ...'* and the Respondent is to *'give credit for any overpayment in the next year's service charge demand'*.

6.4.4 Clause 1.1 and 5 and paragraph 3.1 of Schedule 4 and paragraph 2 of Schedule 6 the Applicants *'covenant to pay on demand as insurance rent a fair and reasonable proportion of the Landlord's expenses of insuring the building'*.

6.4.5 Clause 1.1 and Schedule 7 the service charge expenditure includes *'the costs of cleaning maintaining and lighting the retained parts and the common parts managing agent and account's fees and any other services ... that the Landlord choses to provide for the benefit of the Leaseholders'*.

6.4.6 Clause 1.1 *'the retained parts include external walls and external decorative surfaces of the external doorframes and external window frames'*.

- 6.4.7 Clause 1.1 and paragraph 2(b) and (iii) of Schedule 7, the service charge costs also include *'the costs fees and disbursements of any person reasonably and properly retained by the Landlord to act on his behalf in relation to the property'*.
- 6.4.8 Clause 5 and paragraphs 7 and 16 of Schedule 4, the Applicants covenant to *'pay all costs and expenses including solicitor's costs incurred in the enforcement of the Leaseholders' covenants and to indemnify the Landlord against such costs arising from any breach of covenant or act or omission of the Leaseholders'*.
- 6.4.9 At paragraph 2.1, Schedule 6 the landlord is required to take out insurance with a reputable insurer on *"fair and reasonable terms that represent value for money"*. Paragraph 2.3 Schedule 6 requires the landlord to serve on the tenant a Notice giving: full particulars of the gross cost of the insurance payable; the tenants share of the gross costs; and, the date by which the gross costs are payable to the insurer.

### **The issues**

#### **The surplus funds transferred to the Respondent at freehold transfer.**

- 6.5 Mr Brooke confirmed to the Tribunal that it was common ground that a sum of £15,144.06 of surplus service charge funds were transferred from the previous freeholder to Assethold Limited when they acquired the freehold in July 2020. This was confirmed by Ms Edmunds, Counsel for the Respondent.
- 6.5.1 Mr Brooke told Tribunal that the funds comprised monies contributed by the Applicants as service charge and held on trust pursuant to s.43 of the Landlord & Tenant Act 1987. The Respondent received the surplus funds by way of a set-off against the purchase price.
- 6.5.2 In accordance with paragraph 2.3 Schedule 4 of the lease, the Respondent had to apply this surplus to the 2020/21 service charge. Mr Brooke explained that the Respondent alleges they accounted for each reimbursement on the individual statements. She referred the Tribunal to a letter from Assethold (see p127 of the bundle) which confirms this was the approach adopted. Mr Brooke claimed there was no substance to this statement, explaining that the monies credited to Flat 4's demand was less than the 10.86% lease apportionment of the unaccounted for funds and there was no explanation for the reimbursement of this reduced sum. Mr Brooke argued that the sum credited represented the amounts paid by Flat 4 to the previous managing agent in respect of insurance and estimated service charge 2020/21.
- 6.5.3 Counsel for the Respondent took Tribunal to the service charge demand (p534 of the bundle) for Flat 4 in respect of the relevant period. Ms Edmunds claimed that the sum shown in this demand represented the contribution Applicant 1 had made to these funds. She explained these funds represented previous contributions by all Leaseholders.

Counsel was however unable to provide any detail of level of contribution by each of the four other Leaseholder Applicants and, when queried by Tribunal was unable to reconcile the other demands made by the Respondent with credits shown from the unaccounted for funds.

- 6.5.4 Tribunal asked Ms Edmunds whether there was a schedule that showed the different proportions of contribution made by the Leaseholders to the unaccounted for funds. She said to her knowledge this was not available. Ms Edmunds suggested that the contributions to the fund may include surplus amounts greater than the percentages shown of the service charge liability in the lease.
- 6.5.5 Questions to both Counsel by Tribunal failed to confirm that the credits made to Applicants 2 and 5 equalled the service charge apportionments contained in their leases.

### **Findings of the Tribunal**

- 6.6 It is agreed between the parties that a sum of £15,144.06 was transferred between seller and purchaser of the freehold in July 2020.
- 6.7 Counsel for the Respondent confirmed these monies represented contributions made by the Leaseholders to the service charge at, or prior to July 2020.
- 6.8 Despite specific questions of Counsel for the Respondent, no information was presented to explain the level of contribution by each of the eight Leaseholders at the property.
- 6.9 The Tribunal would expect that any contributions made by leaseholders to service charge are held in separate accounts. That a competent good property manager and freeholder would hold detailed information on the makeup of those funds. Our enquiries revealed Assethold Limited and Eagerstates Property Management fell below the minimum requirements of a competent landlord in this regard.
- 6.10 On numerous occasions the Respondent was asked to provide details of the credits to each of the individual Leaseholder accounts. Much of the previous disclosure requests by Tribunal had focussed on this information. The Tribunal asked for this information at the Hearing, and it was not available.
- 6.11 The explanation provided to Tribunal by Counsel for the Respondent as to the difference between the credited sum and total proportion of funds was not substantiated by evidence. Counsel argued that the sum of £15,144.06 included monies other than the sums sought in contribution from each of the Leaseholders. These “other monies” were not specified.
- 6.12 The Tribunal concludes that there is no evidence to support the assertion that a distribution of the surplus funds by way of setoff

against the service charges of each of the Leaseholders was made. Accordingly, a sum of £15,144.06 should be credited to the Leaseholders in the same proportions as those shown in the table at p515 of the bundle.

- 6.13 The Tribunal determines that the onus is on the Freeholder to prove to each Leaseholder that any previous credit made to their accounts was made from these monies. This proof should include a reconciliation based on certified accountancy evidence.

### **Inclusion of Insurance premiums as Service Charges**

- 6.14 Counsel for the Applicants explained to Tribunal that the lease treats the payment of insurance sums (including premiums) differently from the payment of service charge. 'Insurance rent' is defined in clause 1.1 as being *'the Tenants' proportion of the cost of any premium (and other related sums expended or incurred by the Landlord pursuant to paragraph 2 of Schedule 6)'* (p453 of the bundle).

- 6.15 The Tenants' liability for insurance rent is governed by different lease provisions. Mr Brooke explained that the Landlord is to take out insurance with a reputable insurer *'on fair and reasonable terms that represent value for money'* paragraph 2.1 Schedule 6 (p475 of the bundle). Paragraph 2.3 of Schedule states, *'the Landlord is then to serve on the Tenant a Notice giving (i) full particulars of the gross rent of insurance payable, (ii) the Tenants' share of the gross costs and, (iii) the date by which gross costs are payable to the insurer'*.

- 6.16 Having done so, the Tenant is obliged to pay the insurance rent on demand by the date specified in the required Notice. This is at paragraph 3.1 (a), Schedule 4 (p466 of the bundle).

- 6.17 It is contended that the Landlord must adhere to these provisions, to make a valid demand for reimbursement of the insurance premiums. The Applicants contended that service charges did not include insurance premiums and the Landlord cannot demand a sum on account for estimated future insurance premiums. The lease provisions allow for insurance rent charges such that the "Landlord expends....and other expenses reasonably incurs" for insurance policy that it intends to take out for the period in question.

- 6.18 Counsel for the Respondent acknowledged these covenants in the lease but argued that they were not determinate unlike the requirement to pay the monies. Ms Edmunds argued that these covenants were intended to offer guidance to Freeholder on provision of advice to leaseholders on premium and recovery of the Insurance Rent.

### **Findings of the Tribunal**

- 6.19 The Tribunal reviewed the lease covenants referred by Counsel for the Applicants and concluded that the covenants were explicit and two specific points could be deduced: -



- a) service charges cannot include insurance rent; and
- b) the Landlord cannot demand a sum on account for estimated future insurance premiums. That a Notice must be served based on a factual premium quote from an insurance provider.

6.20 It was accepted by Respondents Counsel these procedures were not satisfied by the landlord since they acquired the freehold. It is for these reasons that Tribunal determines the monies charged through the service charge Demands for Insurance Rent are not payable.

6.21 The sums charged amounts to £17,184.08. Table 1 below gives a breakdown of the invalid charges shown on the service charge accounts.

Invalid Insurance Rent Demands		
		Sum charged
Insurance September 2020-21		£3,746.04
Insurance September 2021-2022		£3,933.34
Insurance September 2021-2022		£4,514.49
Insurance claim excess		£250.00
Insurance September 2022-23		£4,740.21
		<b>£17,184.08</b>

6.22 The sum for the previous agent is allowed because Tribunal were told that the previous freeholder followed the lease procedure in recovery of Insurance Rent.

## 7. **Invalid demand for incurred service costs**

7.1 Mr Brooke took the Tribunal to the service charge mechanism specified in the lease. He told the Tribunal that an estimated service charge should be made *'before or as soon as possible after the start of each service charge year the Landlord is to prepare an estimate of the service costs for the service charge year'* paragraph 4.1 Schedule 6 (p476 of the bundle). On receipt of the estimated service charge for the service charge year, on the rent payment date (1 April) the Tenant must pay this sum.

7.2 The actual service charge is payable after the end of a service charge year. The Landlord is required under paragraph 4.3 Schedule 6 (p476 of the bundle) to prepare and send a certificate showing the actual service costs and service charge for each Tenant incurred in the preceding year. This covenant provides for a reconciliation between the estimated and the actual service charge.

7.3 It is alleged that the Freeholder submits the actual service charge before the end of the financial year and is, therefore, in breach of the lease covenants.

7.4 Counsel for the Respondent argued that this had no material effect on the Leaseholders. Ms Edmunds claimed that preparation of the actual

charges prior to the end of the service charge year enabled a timely reconciliation which was to the benefit of the Freeholder and Leaseholders. She contended that the lease terms were not intended as prohibitive, but to offer guidance to the Landlord and managing agent.

### **Findings of the Tribunal**

- 7.5 It was common ground between the respective Counsels that the estimated service charge, actual service charge and rent payment date were defined in the lease.
- 7.6 The Tribunal considered the submissions made by respective Counsels about the weight a competent and prudent management agent should place on the prescriptive terms that relate to service charge demands.
- 7.7 The Tribunal accepts that there was no material loss or detriment to the Tenants by premature issue of the actual service charges, other than charges incurred in March of any service charge year being disregarded and carried forward.
- 7.8 After deliberation the Tribunal concluded that, despite the Leaseholders suffering no prejudice from the failure of the Respondent to comply the lease covenants, it was unable to condone a management practice that was in contravention of the lease. It was for this reason they conclude that any reconciliation that had taken place of the service charge account, based upon actual service charges calculated prior to 31 March in any service charge year were invalid.
- 7.9 Accordingly, the Tribunal determine that the Demands for the payment of the difference in the service charges between “Estimated and Actual” for service charge years 2020-21 and 2021-2022 were invalid and are not payable.
- 7.10 The demands for payment of the service charge costs for 2020/21 and 2021/22 are therefore invalid and not payable.
- 7.11 It is contingent on the Landlord to issue new demands based upon appropriate compliance with the relevant lease covenants.

### **8. Ad-hoc demands for service charges**

- 8.1 The Leaseholders claimed there was no provision in the lease for ad-hoc demands for payment of service charge in respect of individual items of expenditure. They claimed, contrary to this, the Landlord had demanded payment of service charges from leaseholders for individual items on arbitrary dates. Six examples of demands for payment made ad-hoc were provided to Tribunal.
- 8.2 Mr Brooke alleged these ad-hoc demanded and paid sums were recovered again through the year-end service charge accounts without credit for the earlier payment of the ad-hoc demand.

8.3 Counsel for the Respondent argued that it was essential for the Landlord to be able to make ad-hoc demands to enable efficient and effective management of the property. Unforeseen costs did occur in the management of property and there was a provision in the lease for such charges to be made on an ad-hoc basis. Ms Edmunds referred Tribunal to the facility within the lease which allowed for a balancing charge to be made and for any shortfall between estimated and actual expenditure to be paid on demand. It was her contention that there was no requirement for this to wait until the next annual service charge demand: this was in contrast to the express provision for any rebate to take place at the next rent payment date.

8.4 Ms Edmunds also asserted that any items paid following an ad-hoc demand were reflected in the service charge expenditure accounts.

### **Findings of the Tribunal**

8.5 Tribunal accepted the lease provided for service charges and a balancing charge to compensate for any shortfall between estimated and actual expenditure to be paid on demand. The Tribunal accept that accurate service charge accounting is necessary to ensure no double recovery of these charges.

8.6 The Tribunal does not agree with Ms Edmonds that the lease provides for ad hoc demands in respect of individual items of expenditure. The reference to the “Tenant shall pay the difference on demand” at Clause 2.3 Schedule 4 (P466) refers to an outcome where there may be a shortfall after reconciliation between Actual and Estimated Costs following the end of the service charge year. The Tribunal determine this clause and other lease provisions do not provide for ad hoc charges.

8.7 The Tribunal are also concerned that double recovery of ad-hoc charges may take place given the quality of management since Assethold Ltd purchased this property.

8.8 Accordingly, the ad-hoc charges made during the relevant service charge years are disallowed.

## **9. Reasonableness of the service charges for the years 2020/21-2021/22**

9.1 A schedule is provided at Appendix B setting out the reasonableness of the charges in dispute between the parties.

9.2 The Tribunal has reviewed each item and made a finding that are shown in columns 7-10 of the schedule.

9.3 It is acknowledged that the Tribunal has determined that the demand for service charges in years 2020/21 and 2021/22 are deemed invalid. The Tribunal however anticipates the Respondent will make new valid demands in compliance with the provisions of the lease and statutory requirements. It is for this reason that Tribunal has reviewed the

reasonableness of each of the challenged items in the schedule and given reasons and findings.

## 10. Costs

### Rule 13 costs

- 10.1 Both Counsels were invited to make written submissions on Costs by the Tribunal. They both expressed a preference to make oral submissions at the hearing. Tribunal acceded to their preference and heard Costs submissions from both Counsels.
- 10.2 The Applicants made an oral submission seeking an Order for rule 13(1)(b) costs, to reimburse them in respect of the extra costs incurred arising from the Respondent's unreasonable conduct. This follows the valid application made to Tribunal.
- 10.3 They refer to the Respondent's alleged persistent refusal to fulfil disclosure obligations, leading to an additional case management hearing, extra correspondence and delay.
- 10.4 Counsel for the Applicants pointed out to the Tribunal that the Respondent has still refused to disclose statements of account until late-May 2023. They were told the account beyond 7 March 2022 had not been provided. It was alleged the incomplete disclosure of documents requested by Tribunal was a deliberate attempt to avoid accountability. The Applicants' complained of the Respondent's conduct in the proceedings and his refusal to account to each Leaseholder for the management of the property.
- 10.5 Counsel for the Respondent emphasised that it was a '*high bar*' to overcome if a rule 13 order was to be made by the Tribunal. Ms Edmunds identified a number of occasions when part of the seven Directions issued by Tribunal were not followed by the Applicants. It was her contention that there had been errors and a failure to comply on the part of the Applicants which was not being considered in these proceedings.
- 10.6 In a statement of case, the Applicants submitted a schedule of costs to the application including charges for a Partner and paralegal in the sum of £6,045 excluding VAT. The Applicants case, on the issue of rule 13 costs, referred Tribunal to the Decision in *Willow Court Management Co Limited –v– Alexander [2016] 0290 UKUT (LC)* where it was held, that the threshold of what amounted to unreasonable behaviour under rule 13 was a high one and, even if Tribunal decided there was an element of unreasonable conduct, an order for the payment of costs did not necessarily follow.
- 10.7 Counsel for the Respondent submitted that its conduct had not reached the relevant threshold.

## Tribunal Findings

### 10.7 Rule 13 (1) (b) states

*'13 (1) The Tribunal may make an Order in respect of costs only or (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in ...'*

10.8 The Tribunal is referred to the Appeal Case of *Ridehalgh –v– Horsefield [1994]* which provided guidance as to the term 'unreasonable' as set-out in rule 13.

10.9 This is followed by a three-stage test to be applied by Tribunal in determination of a rule 13 application. The Upper Tribunal referred to adherence to the three stage test when determining rule 13 applications in the decision *Assethold Limited –v– Lessees of Flats 1-14 Corben Mews [2023] UKUT 71 (LC)*.

10.10 This three-stage test is contained in *Willow Court Management Company –v– Alexander* and is set-out in paragraph 28:

*'At the first stage, the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion, but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of the behaviour will properly be adjudged to be unreasonable and the threshold for the making of an Order will have been crossed. A discretionary power is then engaged, and decision maker moves to a second stage of the enquiry. At that stage, it is an essential for the Tribunal to consider whether, in the light of the unreasonable conduct it is found to have been demonstrated, it ought to make an Order for costs or not. It is only if it decides that it should make an order that the third stage is reached, when the question is what the terms of that Order should be.'*

10.11 In relation to the conduct of the Respondent, the Tribunal identified the following unreasonable behaviour:

- a) The need for seven sets of Directions from the Tribunal to satisfy the reasonable needs and requirements of the Applicants in provision of sufficient information to prosecute their case.
- b) Failure by the Respondent to comply substantively with the Directions which necessitated revised and additional orders and directions from Tribunal to effect Disclosure.
- c) Failure by the Respondent to attend the Hearing held on June 14<sup>th</sup> and a number of other previous case management hearings.
- d) Failure to provide all of the information required through the Tribunal's Directions even by the date of the Hearing.

e) The need for three case management hearings. In the tribunal's experience, it is unusual for there to be a need for multiple case management hearings following a 27A application.

10.12 It is for these reasons that the Tribunal finds unreasonable conduct is demonstrated.

10.13 The Tribunal then deliberated about whether an Order for costs or not should be made.

10.14 They posed the question "*What and how much detriment arises as a consequence of this behaviour and to whom*". They identified two parties:

a) The Applicants who incurred additional legal and administrative costs devoted to dealing with this Application; and

b) The costs to the Tribunal in conducting 3 Case Management Hearings and the preparation of 7 Directions with associated administration time and resources. Most of these Directions were ignored by the Respondent who repeatedly failed to comply with disclosure requirements. This egregious behaviour results in unnecessary costs to the public purse and is wholly unjustified.

The Tribunal is aware of the "high bar" to overcome in justifying a Rule 13 Order. It is for the reasons detailed above that the Tribunal conclude justification exists from this behaviour and an Order for costs should be made.

10.15 The third stage of the process is the terms of that Order. A schedule was provided to Tribunal showing additional costs amounting to £6,688.80 inclusive of VAT were incurred by the legal advisors acting on behalf of the Applicants as a consequence of the failure of the Respondent to comply with the Directions.

10.16 Tribunal has reviewed this schedule and there are some costs included that it considers would have been incurred in a standard application. A summary assessment has been made and a 10% reduction applied.

10.17 Accordingly, Tribunal makes a rule 13 Costs Order in the sum of £6,019.92 plus VAT payable by the Respondent.

### **Section 20 costs**

10.18 Any determination with regard to a s.20(c) and paragraph 5A Order application, is made on whether it is "***just and reasonable***" that the Respondent be prevented from recovering his costs of the proceedings based on the level of success enjoyed by the Applicants.

10.19 Mr Brooke argued that it was necessary for the Applicants to make an application due to the persistent refusal of the Respondent to provide appropriate information and undertake good management of the property. He in particular referred to the alleged misuse of the surplus

funds and the potential double recovery of service charges following ad-hoc demands. Mr Brooke also identified curt e-mails received from the Respondent following enquiries about service charges (pp568, 579, 582 and 584 of the bundle).

- 10.20 Ms Edmunds argued that a s.22 application should have been made by the Applicants and this would have satisfied their requirements in respect of additional information. She refuted the assertion that Assethold Limited and Eagerstates had fallen short of what was expected of a responsible landlord with an extensive portfolio of residential properties.
- 10.21 The Tribunal has found in favour of the Applicants on most of the disputed issues. Given these outcomes they determine it is just and fair that the Respondent Landlord cannot recover their Costs of the tribunal proceedings through the service charge provisions within the lease.
- 10.22 Tribunal make a s.20(c) Order preventing recovery of costs incurred by the Respondent in the proceedings. They also Order the Respondent to reimburse the cost of the Tribunal Application and Hearing fee to the Applicant.

**Name:** Ian Holdsworth  
Valuer Chairman

**Date:** 7 July 2023

## **RIGHTS OF APPEAL**

- 1 If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case.
- 2 The application for permission to appeal must arrive at the Regional Office within 28-days after the Tribunal sends written reasons for the Decision to the person making the application.
- 3 If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie, give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

## **Appendix A**

### **The law**

#### **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 provisions 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.

## **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 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 tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a 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.

## **Section 21B**

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

- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Appendix B: Tribunal Findings Flats 1,3,and 4 32 A Acre lane London SW2 5SG and Flats 1,2 and 7 18 A Trinity Gardens London SW9 8DP

Trinity Tribunal | Scott Schedule prepared jointly by parties

Case Number: LON/00AY/LSC/2022/0147

Item	Accounts and demands	Cost	Tenants comments	Landlord's comments	Service Charge Years		Tribunal Findings from hearing	Payability	Determination of reasonableness and explanation of Tribunal finding	Amount determined payable
					April 2020/21: Item Heading	April 2021/22: Item Heading				
					Item in accounts	Item in accounts				
1	Insurance premium previous Landlord 01.02.20-31.01.21	£ 1,769.92	Not payable. Correctly demanded by previous Landlord and included in previous accounting year.	As the Respondent commenced management in the middle of the year the end of year account had to include all charges, including those by the previous agents. Payments made to the previous agents were also taken into account.	Insurance ( Previous agents)		The LL was correct in insuring the building in accordance with the lease obligations. They failed to comply with lease Insurance Rent procedure	This sum is payable under para 2.1 Schedule 6 of lease provided appropriate Notice and Demand procedure satisfied.	The LL was correct in compliance with lease provision and sum payable. Any refund should be made by Goodsirs Ltd, the previous managing agent.	£ 1,769.92
2	Insurance overlap 23.07.20-31.01.21	£ 3,696.04	Previous Landlord insured for the period 01.02.20-31.01.21. Respondent was insured for the period.	The previous Landlord was requested to cancel their insurance on completion and account for the payment.	Insurance but shown as £3,746.04 in account		£1741.97 payable due to overlap Equivalent quotes. GoodSirs failed to reimburse see P 202. There was a claim for an escape of water in July 2020 which may have affected premium.	This sum is not payable until lease procedure at Schedule 6 is satisfied.		£ -
3	Insurance premium 23.07.2130.06.21	£ 3,696.04	Excessive costs. Quote on same claims basis £1,485.18	It is assumed that this refers to the quote supplied by Allianz. This quote is not comparable; it only covers 2 no. flats and makes no mention of the commercial unit and many other points.	Insurance		Additional entry to reflect reasonableness.	This sum is not payable until lease procedure at Schedule 6 is satisfied. On satisfactory compliance of Schedule 6 procedure the sum payable is £2,996.80	The LL failed to provide full information about broker costs and whether policy forms part of block policy. Tribunal reduce sum payable by 20%.	£ 2,996.80
4	Cleaning 01.03.2107.03.22. 2023 (on account).	£ 2,021.80 £ 2,386.80 £ 2,500.00	Poor service.	Complaints have not been raised with managing agents previously.	Common Areas		Ms. Sainty proposed £1,454 pa increase in block cleaning. The cleaning specification is at P 345-347 and invoices at P322-337.Cleaning Common Areas only. Two upper floors	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts these charges as reasonable	£ 2,021.80 £ 2,386.80 £ 2,500.00
5	Window cleaning 2021 2022 2023 (on account)	£ 336.00 £ 540.00 £ 750.00	Windows are demised to the leasees.	External frames are retained – see definitions in lease.	Window Cleaning		Windows are not retained by Landlords. Assert no cleaning. R argues window cleaning takes place P 349-354. Visit every few months. £180 every time clean flats of 8 flats. Three Storey building	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts these charges as reasonable. The window frames are retained as LL responsibility within lease.	£ 336.00 £ 540.00 £ 750.00
6	Bin cleaning 2022 2023 (on account)	£ 830.40 £ 850.00	Included in the cleaning specification so not payable. Service not provided.	Not included in cleaning specification.	Bin cleaning		Assert service is so poor that service not required. Bin invoice 338.No service required and do not seek charge.	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts these charges as reasonable and service required.	£ 830.40 £ 850.00
7	Property Run Contracts Ltd invoice 04.12.20	£ 595.20	Not an invoice but a quote for works.	This is an invoice.			See P 355 -invoice provided	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts the document at P 365 is an invoice and these charges as reasonable	£ 595.20
8	BNO invoice 17.12.20	£ 624.00	Not an invoice but a quote for works.	This is an invoice.			See P367- invoice provided	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts the document at P 365 is an invoice and these charges as reasonable	£ 624.00
9	BNO invoice for electrical audit report 17.12.20	£ 1,920.00	Excessive cost.	No basis provided for this.	Under Common parts cleaning		Electrical works carried out 2016. EFP visited 22/06/21 to check bulbs P425. P371 invoice	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts the documents at P 425 and P371 is an invoice and these charges as reasonable	£ 1,920.00
10	BNO invoice for electrical specification and scope of works 18.01.21	£ 1,300.00	Excessive cost and unnecessary to incur this cost.	This is an invoice.			Alleged Page 394 electrical specification testing on invoice.	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accepts the document at P 394 is an invoice and these charges as reasonable	£ 1,300.00
11	BT final bill 09.03.21	£ 327.96	No BT service at the premises.	Does not show on account.					Agreed and removed from dispute	
12	Property Run Contracts Ltd invoice 14.07.21	£ 4,783.20	No detail but assumed to be electrical works. Excessive costs.	Charge is per invoice.		Shown as £5,644 P357 Electrical works as per 20.	Appears in management accounts as £5,644. The invoice for the works is at P357	These sums are payable under clause 1.1 and Schedule 7	The Tribunal were unable to identify work done or the justification. An alternative quote provided at P164 in sum £1189.50. Tribunal add 20% weighting to reflect inner London costs.	£ 1,427.40
13	JMC invoice for the insurance valuation 25.08.21	£ 1,860.00	Excessive cost.	No basis for this and no alternative quote provided.			Alternative quotes provided from London based Chartered Surveyors which show lower costs than charged.	These sums are payable under clause 1.1 and Schedule 7	The Tribunal accept the alternative quotes as a basis for revised allowed charges of £1320 inclusive of VAT	£ 1,320.00

14	Management 2 Management Ltd invoice 03.09.21	£ 1,500.00	All the bulbs were tested by EPF on 27.05.21 and passed bar one. Unreasonable to replace all the bulbs four-months later. Excessive cost.	Replaced as per report obtained at time.		Emergency Lighting replacement	Tribunal referred to alternative quotes at P165	These sums are payable under clause 1.1 and Schedule 7	Alternative quotes submitted at P165 for light bulb renewal are accepted	£ 432.00
15	Property Run Contracts Ltd invoice 09.09.21	£ 818.26	All the bulbs had been replaced by Management 2 Management on 31.08.21. Seven hours' labour to replace 4 no. bulbs. Cost unreasonably incurred and excessive.	Please refer to invoices which show the report for this.		Electrical call out	Discussion between parties representatives about time expended at premises and whether this was justified.	These sums are payable under clause 1.1 and Schedule 7	The Tribunal determine this sum excessive and based upon alternative quotes determine a charge of £230 is reasonable.	£ 230.00
16	JMC invoice for the PM Schedule 29.10.21	£ 1,170.00	Excessive cost.	No basis for this and no alternative quote provided.			Alternative quote provided at P164 by London base Chartered Surveyors	These sums are payable under clause 1.1 and Schedule 7	Alternative quote provided at P164 is accepted and £420 deemed a reasonable sum for this work.	£ 420.00
17	Property Run Contracts Ltd invoice 11.11.21	£ 1,995.74	Partially an invoice, but mostly a quote for works.	Charge as per invoice.			See invoice at P431-2	As above	The Tribunal accepts the document at P 431-2 is an invoice and these charges as reasonable	£ 1,995.74
18	Property Run Contracts Ltd invoice 30.11.21	£ 822.00	Any works charged for cannot be identified.	Charge as per invoice.		Electrical call out intercom	See invoice at P433	As above	The Tribunal accepts the document at P 433 is an invoice and these charges as reasonable	£ 822.00
19	Property Run Contracts Ltd invoice 07.01.22	£ 772.70	Any works charged for cannot be identified.	Charge as per invoice.			See invoice at P436	As above	The Tribunal accepts the document at P 436 is an invoice and these charges as reasonable	£ 772.70
20	Property Run Contracts Ltd invoice 10.02.22	£ 581.82	Any works charged for cannot be identified.	Charge as per invoice.		LED Bulkhead replacement	See invoice at P439	As above	The Tribunal accepts the document at P 439 is an invoice and these charges as reasonable	£ 581.82
21	2 no. light fittings replaced 2021/22	£ 579.31	No invoice provided.	Charge as per invoice.		2 Light fittings	No invoice provided	As above	Sum disallowed as no evidence of payment	£ -
22	Management fees 23.07.2031.03.21 01.04.21- 31.03.22	£ 1,872.00 £ 2,515.20	Excessive cost for exceptionally poor service.	Management fee is not excessive for the period.  No alternative quotes	Management fee	Management fee	No invoice provided. Counsel for Respondent accept no submission.	These sums are payable under clause 1.1 and Schedule 7	The Tribunal do not accept competent and diligent management was undertaken by Eagerstates during the service charge years in dispute. A reduction of 60% is made to the fee charged.	£ 748.88 £ 1,006.08
23	Accountancy fees 23.07.2031.03.21 01.04.21- 31.03.22	£ 600.00 £ 660.00	Excessive for simple list, not complying with TECH 03/11 and not lease compliant.	Reasonable quote for accountant to certify expenditure.  No alternative quotes.			Invoices provided for services	These sums are payable under clause 1.1 and Schedule 7	Tribunal accept these are low fees but service below typically expected. A reduction of 20% made to fee charged.	£ 480.00 £ 528.00
24	Ad-hoc demands all flats.	Unknown	Disclosure not given. Further detail cannot be provided at this stage.				Further details provided at para 50 of Applicants Skelton argument		This sum is addressed in the attached Decision	n/a
25	Previous Landlord's charges: bank charges.	£ 28.15	£13.15 incurred in the period 01.04.20-22.07.20	Charged as per documents.			Cost incurred prior to April 1st 2020. Should not have been included in 2020/21 SC	Not disputed by applicants.	No evidence offered to Tribunal of how previous payments were accounted for by managing agents. The payments made by applicants to GoodSirs Ltd are not explicit. This applies to items 2429. A supplement of 50% is made to the sum claimed by the Applicant to reflect lack of clarity from both submissions.	£ 19.75
26	Previous Landlord's charges: semiannual fire alarm and emergency lighting service 14.01.20 (£267). Fire alarm call out 11.03.20 (£3186)	£ 453.00  £267 + £186)	Cost incurred in period 01.04.1931.03.20 and so not recoverable by the Respondent in the period 01.04.20-31.03.21	Was passed over as part of handover.		Fire Risk assessment	No financial evidence submitted by either party. Applicants seek nil payment. The LL the sum of £453.	Not disputed by applicants.	A supplement of 50% levied on Applicants proposed sum to reflect uncertainty about charges.	£ 226.50
27	Previous Landlord's charges: pest control.	£ 1,218.00	£198 + £198 + £156 = £552 incurred in the period 01.04.20-31.03.21	Was passed over as part of handover.		Pest control	No financial evidence submitted by either party. Applicants seek £552 payment.	Not disputed by applicants.	As above	£ 828.00
28	Previous Landlord's charges: management.	£ 2,018.49	Previous Landlord's accounts show £875 was charged for the period 25.03.20-23.06.20 and £268.49 was charged for the period 24.06.2021.07.20 £875 + £268.39 = £1,143.49.	Was passed over as part of the handover.			No detailed evidence offered by either party. The Applicants seek to make £1143.49 payment.	Not disputed by applicants.	As above	£ 1,715.23
29	£15,114.06		Transferred on completion 23 July 2020 but not accounted for.	Accounted for on individual statements.			Amount is not in dispute.	Accounting procedure in dispute and appropriate compliance with clauses 1.1 and 5 of Schedule 4.	This sum is addressed in the attached Decision	n/a