



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

Case reference : **CHI/43UM/LSC/2023/0027**

Property : **Flat 8 River Court Sheerwater Woking
GU21 5FT**

Applicant : **Ji Hoon Yoon**

Representative : **None**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **For the determination of the payability
and reasonableness of service charges
under section 27A of the Landlord and
Tenant Act 1985**

Tribunal members : **Judge H. Lumby
Mr P Smith FRICS
Ms J Dalal**

Venue : **Havant Justice Centre**

Date of hearing : **10 August 2023**

Date of decision : **25 August 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that all sums demanded by Eagerstates Limited prior to the acquisition of the freehold by Assethold Limited on 21 April 2023 are not due for payment.
- (2) The tribunal determines that no insurance premium is payable by the Applicant until his acquisition. It accepts his calculation of the amount due and that he is due an additional credit equal to £56.62.
- (3) The tribunal determines that the insurance for August 2021/22 demanded in the 2021 service charge year is reasonable and payable.
- (4) The tribunal determines that only a fair and reasonable proportion of £420 is recoverable from the Applicant through the service charge in respect of rubbish clearance and waste removal.
- (5) The tribunal determines that the cost of bin purchases demanded in the 2021 service charge year is reasonable and payable.
- (6) The tribunal determines that the costs for communal garden maintenance demanded in the 2021 service charge year is reasonable and payable.
- (7) The tribunal determines that no amount is payable by the Applicant in the 2021 service charge year in relation to call outs for car park and bollard lighting/lampposts.
- (8) The tribunal determines that the cost of calls outs to cut back branches and removal of tree in parking space demanded in the 2021 service charge year is reasonable and payable.
- (9) The tribunal determines that the cost of the supply and installation of a digital code lock and the installation of timber to support demanded in the 2021 service charge year is reasonable and payable.
- (10) The tribunal determines that the cost of repair/replacement of the broken post and the supply of a new bollard demanded in the 2021 service charge year is reasonable and payable.
- (11) The tribunal determines that the cost of the out of hours call out to supply, replace and recode new combination lock demanded in the 2021 service charge year is reasonable and payable.
- (12) The tribunal determines that no amount is payable by the Applicant in the 2021 service charge year in relation to the repair and reinstatement of the fence surrounding the substation.

- (13) The tribunal determines that the aggregate management fee payable by the Applicant for the 2021 service charge year is £155 plus VAT.
- (14) The tribunal determines that the cost of the window cleaning demanded in the 2021 service charge year is reasonable and payable.
- (15) The tribunal determines that the costs of the Fire Health & Safety testing, services and repairs and the Fire Health & Safety Risk Assessment 2021 demanded in the 2021 service charge year are reasonable and payable.
- (16) The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the Fire Health & Safety Risk Assessment for the year 2022.
- (17) The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the securing of all locks to the water and electric cupboard.
- (18) The tribunal determines that only a fair and reasonable proportion of £2,134.54 plus VAT is recoverable from the Applicant through the service charge in respect of common parts electricity.
- (19) The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the supply of fitting of key box or the call out for the key safe.
- (20) The tribunal determines that the cost for call outs for communal service Aerial Tec for the 2021 service charge year is reasonable and payable.
- (21) The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the reduction of downpipe and the installation of outlet balloons.
- (22) The tribunal determines that the cost for the drainage engineer for blockage, CCTV investigation and clearing for the 2021 service charge year is reasonable and payable.
- (23) The tribunal determines that the cost for fitting of smoke seals on lobby doors for the 2021 service charge year is reasonable and payable.
- (24) The tribunal determines that that no amount is payable by the Applicant pursuant to the estimate for the 2022 service charge year in relation to insurance for the year from October 2021.

- (25) The tribunal determines that the estimated cost for communal garden maintenance for the 2022 service charge year is reasonable and payable.
- (26) The tribunal determines that the estimated cost for the installation of a safety precaution for a pavement for the 2022 service charge year is reasonable and payable.
- (27) The tribunal determines that the aggregate management fee payable by the Applicant for the 2022 service charge year is £155 plus VAT.
- (28) The tribunal determines that the contributions to external and internal repair funds estimated for the 2022 service charge year are reasonable and payable.
- (29) The tribunal determines that the estimated cost of window cleaning demanded in the 2022 service charge year is reasonable and payable.
- (30) The tribunal determines that a reasonable estimate of the Applicant's contribution towards common parts electricity for the 2022 service charge year is a fair and reasonable proportion of £2,500 plus VAT.
- (31) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant as lessee through any service charge.
- (32) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Applicant's Lease.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2021/2022 and 2022/2023.
2. The Applicant initially brought claims in relation to three service charge years but this was reduced to the two years in question. A Scott Schedule was completed by both parties identifying the issues in dispute.
3. The Applicant accepted either in the Scott Schedule or during the hearing that the following items were payable (the sums referred to are the total charge, not the Applicant's share):

- (i) 2021 – insurance from August 2022 - £17,601.73
- (ii) 2021 – downpipe inspection and cleaning and gutter cleaning - £2,550
- (iii) 2021 - annual Telguard charge and visits to carry out PPM to the barrier - £756
- (iv) 2021 – call out for barrier - £468.00
- (v) 2021 – accountants fees (external) - £360
- (vi) 2021 – communal parts cleaning - £1,551.77
- (vii) 2021 – pest control - £140
- (viii) 2021 – accountants fees (block) - £360
- (ix) 2022 – gutter cleaning - £2,000
- (x) 2022 – drains service - £1,500
- (xi) 2022 – accountants fees (external) - £390
- (xii) 2022 – communal parts cleaning - £1,650
- (xiii) 2022 – fire health & safety testing, services and repairs - £500
- (xiv) 2022 – fire health and safety risk assessment - £250
- (xv) 2022 – accountants fees (block) - £390

These were not considered further by the tribunal.

4. The following items were disputed for the 2021/22 service charge year (the sums referred to are the total charge, not the Applicant's share):

- (i) Insurance from August 2020 - £11,250.50
- (ii) Insurance from August 2021 - £14,560.67
- (iii) Multiple visits for rubbish clearance and waste removal - £3,012
- (iv) Bin purchases - £4,500
- (v) Communal garden maintenance - £3,906
- (vi) Call outs for car park and bollard lighting/lamp posts - £4,280.48
- (vii) Call outs to cut back branches and removal of tree in parking space - £1,188
- (viii) Supply and installation of digital code lock and installation of timber to support it - £342
- (ix) Repair/replace the broken post and supply of new bollard - £732

- (x) Out of hours call out to supply, replace and recode new combination lock - £480
- (xi) Repair and reinstatement of fence surrounding electric substation - £750
- (xii) Management fee for external parts - £8,316
- (xiii) Window cleaning- £530
- (xiv) Fire health and safety testing services and repairs - £358.60
- (xv) Fire Health & Safety Risk Assessment 2021 - £190
- (xvi) Securing of all locks to water and electric cupboard - £39.20
- (xvii) Fire Health & Safety Risk Assessment 2022 - £220
- (xviii) Common parts electricity - £4,806.96
- (xix) Supply and fitting of key box - £249
- (xx) Call out for key safe - £84
- (xxi) Call outs for communal service aerial tec - £468
- (xxii) Reduction of downpipe and installation of outlet balloons - £3,223.20
- (xxiii) Drainage engineer for blockage, CCTV investigation and clearing - £1,056
- (xxiv) Fitting of smoke seals on lobby doors - £250
- (xxv) Management fee for internal parts - £4,320

5. The following items were disputed for the 2022/23 service charge year (the sums referred to are the total charge, not the Applicant's share):

- (i) Insurance from October 2021 and brokers fee - £18,481.82
- (ii) Communal garden maintenance - £4,200
- (iii) Call outs for car park and bollard lighting/lamp posts - £4,280.48
- (iv) Installation of safety precaution for pavement - £2,000
- (v) Management fee for external parts - £8,467.20
- (vi) Repair fund for external parts - £3,000
- (vii) Window cleaning- £750
- (viii) Common parts electricity - £5,000
- (ix) Management fee for internal parts - £4,320
- (x) Repair fund for internal parts - £2,500

The background

6. The property is a one bedroom flat within a block of flats converted from office buildings in 2021. Block 1 (in which the Property is located) comprises eighteen flats. There are a further two blocks, with the whole development consisting of 63 flats.
7. The development was carried out by UK Luxury Heights Limited. It appointed Eagerstates Limited as managing agent. The Applicant has raised issues as to whether items included within the service charge are in fact either part of the development or snagging items relating to it.
8. Subsequent to the completion of the development, UK Luxury Heights Limited transferred the reversion to Assethold Limited, with Eagerstates Limited also acting as its managing agent. The Applicant has raised an issue as to when the transfer of the reversion occurred and whether invoices were therefore being raised on behalf of the correct party.
9. The Applicant is a long leaseholder, holding his interest pursuant to a lease dated 20th May 2021 for a term of 125 years from 1 February 2021. The freehold reversion to the lease is vested in the Respondent.

The lease

10. The lease provides that the tenant is to pay by way of service charge an interim and final service charge pursuant to Schedule 7 of the lease. The tenant's proportion of the costs is a fair and reasonable proportion of the Total Service Costs.
11. The Total Service Costs are the costs listed in Schedule 6 of the lease. The definition of Total Service Cost may also contain such amount:

“considered reasonable by the Landlord as a reserve towards future expenses of a periodical or non-annually recurring nature in connection with any of the said obligations or matters”
12. The service charge is calculated by reference to the calendar year. The tenant is to pay the estimated service charge for each service charge year on 25 March and 29 September each year. Any shortfall is to be paid within 14 days of demand whilst any excess is credited against subsequent payments.

Tribunal determination

13. By directions issued by the tribunal on 20 June 2023, the Respondent was required to confirm that Eagerstates was authorised to act for the landlord. No confirmation was received, even though the completed

Scott Schedule and the Respondent's statement of case were filed by Eagerstates. It is not clear therefore whether the responses filed on behalf of the Respondent represented its position. As the Respondent did not attend the hearing, this could not be confirmed. Appropriate weight was therefore given by the tribunal to the Respondent's responses.

14. As referred to above, the Respondent did not attend the hearing. The Applicant appeared in person. The documents that the tribunal was referred to are in a bundle of 625 pages, the contents of which the tribunal have noted. The bundle included the Applicant's statement of case, the Scott Schedule and a one page statement of case from the Respondent, referring briefly to the freeholder identity issue and the fact that the Scott Schedule has been completed and supporting invoices supplied.
15. Having considered all of the documents provided and heard the submissions made by the Applicant, the tribunal has made determinations on the various outstanding issues as follows.

Identity of freeholder and issue of demands

16. The Applicant has questioned the identity of the freeholder and whether service charge demands have been correctly made. Eagerstates Limited, purportedly on behalf of the Respondent have stated in the Respondent's statement of case:

"It is not clear what the case being raised is. The developer was UK Luxury Heights Limited and the freehold was sold to Assethold Ltd. Contracts were exchanged between the parties in 2021 with completion in 2023. Any issues related to S.3A or S.5 of the Landlord & Tenant Act are not in the jurisdiction of the Tribunal"

17. The bundle contains a copy of the transfer of the reversion from UK Luxury Heights Limited to Assethold Limited dated 21 April 2023. The tribunal finds that this is the date when the Respondent became the freeholder.
18. The tribunal has also been provided with letters from Eagerstates Limited to the Applicant in relation to its appointment as managing agent. The first is dated 31 August 2021 and begins:

"We have been appointed as managing agents by your freeholder UK Luxury Heights Limited and we wanted to introduce ourselves"

The letter provides bank details for future payments, being an account in the name of Eagerstates Limited.

The second letter is dated 30 May 2023 which begins:

“As you might be aware the freeholder has sold their interest in the freehold. We have been appointed as managing agents by your new freeholder Assethold Ltd of 5 North End Road, London NW11 7RJ.”

19. There are various invoices in the bundle issued by Eagerstates Limited, predating the transfer of the freehold to the Respondent, the earliest of which is dated 10 February 2022 and latest of which is dated 1 March 2023. All of these contain the following wording:

Section 47 & 48 Landlord & Tenant act 1987:

Landlord: Assethold Ltd
c/o Eagerstates Ltd.- PO Box 1369, London NW11 7EH

There is also substantial written and email correspondence from Eagerstates Limited seeking payment of sums invoiced to the Applicant prior to the transfer of the reversion.

20. Section 47 of the Landlord and Tenant Act 1987 provides:

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely
(a) the name and address of the landlord, and
...

(2) Where

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1), then... any part of the amount demanded which consists of a service charge or an administration charge (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.”

21. Section 47 is therefore a requirement to provide the landlord’s name and address. The effect of this is that the relevant sum is not payable until those details have been provided. In the case of the all the invoices provided dated prior to the transfer of the reversion to the Respondent, these all state that the landlord is Assethold Limited and not UK Luxury Heights Limited. As a consequence, these invoices do not contain the landlord’s name and address. This means that the invoices do not comply with section 47(1) and so all sums demanded pursuant to such invoices are not due. In addition, any sums demanded as a cost of enforcing payment of such invoices are also not due as these have been wrongly demanded in enforcing payment of sums not actually due.

22. The tribunal therefore determines that all sums demanded by Eagerstates Limited prior to the acquisition of the freehold by Assethold Limited on 21 April 2023 are not due for payment.
23. It is open for new invoices which comply with section 47 to be issued by the Respondent. In that event, the Applicant might be able to rely on section 20B of the Landlord and Tenant Act 1985 to claim that the Respondent is time barred from collecting the sums in question. This will be an issue based on the facts at the relevant time and so has not been considered by the tribunal at this stage.

Service charge sums in dispute

24. The tribunal has considered all of the service charge items in dispute in case there were valid invoices served in relation to these or the Respondent provides valid invoices in due course (which will of course be subject to the section 20B point referred to above). Its determinations in relation to those items are set out below. The submissions considered by the Respondent are limited to the Scott Schedule and the supporting invoices provided.
25. The figures for 2021 are based on the year end charge, those for 2022 based on the estimates for that year.

2021 disputed service charge items

Insurance August 2020/2021

26. It is agreed that the insurance premiums until the Applicant acquired his flat are not payable by him. The Respondent claims that these sums have been credited to him, the Applicant claims that his liability for this £56.63 but he was charged £113.25.
27. The tribunal finds that no insurance premium is payable by the Applicant until his acquisition. It accepts his calculation of the amount due and that he is therefore due an additional credit equal to £56.62.

Insurance August 2021/2022

28. The Applicant has challenged the premium for the 2021/22 insurance on the grounds that only a broker's letter has been provided. The Respondent is reliant on that letter. The tribunal does not consider that the lack of provision of the full policy constitutes evidence that insurance was not obtained. No evidence has been provided to challenge the level of the premium payable. It therefore determines that the premium demanded is reasonable and payable.

29. The tribunal determines that the insurance for August 2021/22 demanded in the 2021 service charge year is reasonable and payable.

Multiple visits for rubbish clearance and waste removal

30. The Applicant claims that this relates to building material and other rubble left behind by the developer and should be its responsibility; he does however accept that one invoice for £420 should be payable by the tenants. The Respondent has argued that the developer has not accepted liability for its removal and therefore the managing agents had to remove this. It is not clear on the evidence whether the rubble was left by the developer or subsequently but on the evidence provided prefers the evidence of the Applicant.
31. The tribunal determines that only a fair and reasonable proportion of £420 is recoverable from the Applicant through the service charge in respect of rubbish clearance and waste removal.

Bin purchases

32. The Applicant argues that insufficient bins were provided by the developer. The Respondent argues that the local council have not provided bins and therefore the acquisition of further bins was necessary to avoid the build up of waste and rubbish. The Applicant has provided no evidence that a specified number of bins had to be provided and so does not find that the developer should be liable for the cost of these. It was reasonable for the managing agents to acquire further bins. The Applicant has not challenged the cost of these and the tribunal finds that the cost was reasonable.
33. The tribunal determines that the cost of bin purchases demanded in the 2021 service charge year is reasonable and payable.

Communal garden maintenance

34. The Applicant argues that the Respondent has done a unsatisfactory job in terms of garden maintenance. Pictures were produced to the tribunal to evidence this. The Respondent argues the invoices have been provided and the evidence of the works is clear. No alternative quotations have been provided. The tribunal finds that the evidence provided does not suggest that the garden maintenance is unsatisfactory and finds the costs to be both payable and reasonable.
35. The tribunal determines that the costs for communal garden maintenance demanded in the 2021 service charge year is reasonable and payable.

Call outs for car park and bollard lighting/lampposts

36. This relates to the cost of repairing faulty bollard lighting and lampposts. The Applicant argues that this should be a developer liability as part of the original installation. The Respondent argues that there is no warranty from the developer and repairing lighting is a safety issue. The tribunal finds that the faults were due to faulty installation by the developer which should have been addressed as a snagging item. The costs are not therefore recoverable from the tenants.
37. The tribunal determines that no amount is payable by the Applicant in the 2021 service charge year in relation to call outs for car park and bollard lighting/lampposts.

Call outs to cut back branches and removal of tree in parking space

38. This relates to cutting back branches of a tree overhanging a car parking space. The Applicant argues that this is snagging rather than a maintenance issue. The Respondent argues that it is maintenance and that no alternative prices for the works have been provided. The tribunal agrees that this is maintenance works, not snagging and therefore is payable. In the absence of alternative prices, it finds the cost reasonable.
39. The tribunal determines that the cost of calls outs to cut back branches and removal of tree in parking space demanded in the 2021 service charge year is reasonable and payable.

Supply and installation of digital code lock and installation of timber to support it

40. The Applicant argues that this lock to the bin store area should have been provided by the developer and is not a maintenance issue. The Respondent argues that the original lock was broken and had to be replaced. The tribunal finds that this cost related to the original installation, by reference to the wording of the invoice. However it also finds that the provision of this lock was not part and parcel of the original development but instead a maintenance matter and so payable by the tenants. It also finds that, as there has been no evidence of alternative costs, the amount is reasonable.
41. The tribunal determines that the cost of the supply and installation of a digital code lock and the installation of timber to support demanded in the 2021 service charge year is reasonable and payable.

Repair/replacement of the broken post and the supply of a new bollard

42. The Applicant contends that he was told by another resident that the bollard in question was broken by a contractor and so should be paid for by them. However, no evidence of this has been provided. The Respondent argues that it was broken and needed to be repaired. The tribunal agrees with the Respondent, based on the lack of evidence or of challenge to the cost.
43. The tribunal determines that the cost of repair/replacement of the broken post and the supply of a new bollard demanded in the 2021 service charge year is reasonable and payable.

Out of hours call out to supply, replace and recode new combination lock

44. The Applicant accepts that the works to replace the lock to the bin area needed to be done but questions the inflated cost due to a call out on New Year's Eve. He has provided evidence of call out costs at other times. The Respondent argues that this was requested by residents to keep the premises secure. There is no dispute between the parties that such works are payable, merely as to the reasonableness of the charge. The tribunal finds that it was reasonable to do the works urgently, to avoid rubbish piling up and therefore finds the cost is reasonable.
45. The tribunal determines that the cost of the out of hours call out to supply, replace and recode new combination lock demanded in the 2021 service charge year is reasonable and payable.

Repair and reinstatement of fence surrounding substation

46. The Applicant argues that part of the fence around the substation was always missing and should have been provided by the developer. The Respondent argues that the developer did not accept any liability for providing this fence, although without evidence to support this contention. The tribunal finds that a proper fence around a substation is something which a purchaser would expect a developer to provide. As a result, this is not recoverable from the tenants.
47. The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the repair and reinstatement of the fence surrounding the substation.

Management fees for external parts and internal parts September 2021/2022

48. The tribunal has considered both these charges together. The Applicant argues that the level of service received is poor, the communications unhelpful and borderline unprofessional and so asserts that a fee of £100 per flat is reasonable. The Respondent argues that a fee of £110 plus VAT

per flat for the external parts and £200 plus VAT per flat for the internal parts is a low management fee. The tribunal agrees that this level of fee where services are provided in a reasonable manner would indeed be reasonable. However, it also notes the communication failures, the wrongly issued invoices and the chasing for payment when actually payment was not due and determines as a result that fees at that level are unreasonable. It finds that a 50% fee is appropriate in aggregate and therefore determines a reasonable fee is £155 plus VAT per flat in aggregate.

49. The tribunal determines that the aggregate management fee payable by the Applicant for the 2021 service charge year is £155 plus VAT.

Window cleaning

50. The Applicant accepts that the cost of window cleaning is recoverable in principle but criticises the quality of the workmanship, arguing that the cleaning left smear marks and a 50% recovery is reasonable. The Respondent argues that the invoices have been provided and that no alternative pricing has been produced by the Applicant. The tribunal finds that there is no evidence of any substandard cleaning; in the absence of this, it finds that the sums claimed are payable and reasonable.
51. The tribunal determines that the cost of the window cleaning demanded in the 2021 service charge year is reasonable and payable.

Fire Health & Safety testing, services and repairs and Fire Health & Safety Risk Assessment 2021

52. The tribunal considered these two items together. The Applicant argues that they are all unnecessary as the building had only recently been signed off following its completion. The Respondent argues that constant servicing is required by law. The Applicant drew the tribunal's attention to paragraph 60 of the Government's publication Fire Safety in Purpose-Built Blocks of Flats, a purpose-built block of four floors should have a new risk assessment completed every four years, and a review every two years would be sufficient. Only in extreme cases would an annual fire risk assessment be appropriate.
53. The tribunal notes that an annual risk assessment would only be appropriate for a block such as this in extreme cases. It also notes that landlords and managing agents have responsibility for ensuring buildings are safe and so considers it reasonable for testing, services and repairs to be carried out annually, even when a building has recently been completed. This is an office conversion not a purpose-built block. Carrying out a risk assessment at the beginning of occupation is also reasonable. As a result, it determines that these items are all reasonable.

54. The tribunal determines that the costs of the fire health & safety testing, services and repairs and the Fire Health & Safety Risk Assessment 2021 demanded in the 2021 service charge year are reasonable and payable.

Fire Health & Safety Risk Assessment 2022

55. The Applicant argues that this is unnecessary for the same reasons and that there is double counting between this and the other fire health and safety risk assessment. The Respondent states that this needs to be carried out annually as recommended by the survey (it does not specify which survey). The tribunal noted the guidance referred to above that only in extreme circumstances would an annual risk assessment be necessary. It is noted that this relates to 2022 and one was carried out in 2021. It also notes that there is an assessment in the 2022 service charge estimate. It is unclear whether there is in fact double counting of assessments (the one in the 2022 estimate may relate to 2022). However, it considers in any event that no extreme case for an annual survey has been identified here. The tribunal therefore determines that an additional risk assessment in 2022 is not reasonable.
56. The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the Fire Health & Safety Risk Assessment for the year 2022.

Securing of all locks to water and electric cupboard

57. The Applicant argues that these should be a developer responsibility, the Respondent has simply provided the invoice for the cost. The tribunal finds that this should have been provided by the developer as part of the development and so is not recoverable from the tenants.
58. The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the securing of all locks to the water and electric cupboard.

Common Parts electricity

59. The Applicant argues that the cost of electricity was inflated as site office containers were provided with electricity from the block between January and May/June 2021. Evidence was provided showing cables running from the block to the containers and the cost dropped substantially when no longer there. The Respondent has simply referred to the invoices.
60. The tribunal has reviewed the invoices provided. The cost for 29 January 2021 to 1 March 2021 was £11055 (or £34.53 a day), from 2 March 2021 to 31 March 2021 was £985.34 (or £32.84 a day), from 1 April 2021 to 1 May 2021 was £941.51 (or £30.37 a day), from 2 May 2021 to 1 June 2021

was £719.22 (£23.20 a day). The cost then drops steeply, with the cost from 2 June 2021 to 1 July 2021 being £46.49 (£1.55 a day), from 2 July 2021 to 1 August 2021 was £51.24 (£1.65 a day) and from 2 August 2021 to 1 September 2021 was £62.25 (£2.01 a day). It is clear therefore that there has been a large decrease and large amounts of electricity used by the containers was wrongfully being charged to the tenants. The tribunal therefore finds that the cost of electricity did include the cost of electricity consumed by the containers and that this should have been met by the developer.

61. In calculating the excess, the tribunal calculated the consumption charged between 29 January 2021 and 1 June 2021; this amounts to 19,143.20 units or a daily amount of 154.38 units (based on 124 days). We have not seen the consumption for the equivalent period in 2022 and so have used the period from 2 September 2021 to 1 January 2022. This amounts to 1,727.8 or a daily amount of 14.16 units (based on 122 days). That amounts to a daily excess of 140.22 units, or 17,387.28. The tariff per unit throughout that period was 15.37p or fractionally higher, we have therefore assumed that price. That leads to an excess charge which should have been payable by the developer of £2,672.42. The total charged to tenant was £4,806.96, this should be reduced by this amount to give a proper charge of £2,134.54.
62. The tribunal determines that only a fair and reasonable proportion of £2,134.54 plus VAT is recoverable from the Applicant through the service charge in respect of common parts electricity.

Supply and fitting of key box and call out for key safe

63. The tribunal has considered these two items together. The Applicant argues that these should be a developer responsibility, the Respondent argues that the Respondent does not need to provide these and so the installation is a maintenance item. The tribunal finds that this should have been provided by the developer as part of the development and so is not recoverable from the tenants.
64. The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the supply of fitting of key box or the call out for the key safe.

Call outs for communal service Aerial Tec

65. The Applicant argues that this is a snagging item for which the developer should be responsible. The Respondent argues that it is instead a maintenance cost, dealing with an issue raised by residents. The tribunal finds that this was raised by an individual occupier. Dealing with this is a maintenance issue and is payable by the tenants. There is no evidence that the costs are not reasonable.

66. The tribunal determines that the cost for call outs for communal service Aerial Tec for the 2021 service charge year is reasonable and payable.

Reduction of downpipe & installation of outlet balloons

67. The Applicant argues that this is a design fault which should have been sorted out by the developer pre-completion. The Respondent argues that it is a maintenance issue. The tribunal does not have sufficient information to identify whether it is a design fault or a snagging item but determines that it should have been the responsibility of the developer in either case. As a result, it determines that the cost should not be recoverable from the tenants.
68. The tribunal determines that that no amount is payable by the Applicant in the 2021 service charge year in relation to the reduction of downpipe and the installation of outlet balloons.

Drainage engineer for blockage, CCTV investigation and clearing

69. The Applicant argues that this is a snagging item for which the developer should be responsible. The Respondent argues that it is instead a maintenance cost. The tribunal finds that this related to an actual blockage in the drains and so is not a design or snagging issue. Dealing with this is a maintenance issue and is payable by the tenants. There is no evidence that the costs are not reasonable.
70. The tribunal determines that the cost for the drainage engineer for blockage, CCTV investigation and clearing for the 2021 service charge year is reasonable and payable.

Fitting of smoke seals on lobby doors

71. The Applicant argues that this should have been installed by the developer, to ensure compliance with the building regulations. The Respondent argues that it is a maintenance issue. The tribunal finds that these seals would have to have been installed as part of the development to ensure the building was signed off. They cannot therefore have been omitted from the original development, meaning that that the original seals must have been damaged, necessitating their replacement. The tribunal therefore finds that these are maintenance works and so are payable as such. There is no evidence that the costs are not reasonable.
72. The tribunal determines that the cost for fitting of smoke seals on lobby doors for the 2021 service charge year is reasonable and payable.

2022 disputed service charge items

Insurance October 2021/22 and brokers fee

73. The Applicant argues that there is a double charge with the previous year. The Respondent argues that this is a reasonable estimate based on the previous year's cost. The tribunal noted that there are estimates for both 2021/22 and 2022/23 but a charge for 2021/22 has already been included in the 2021/22 accounts. No explanation for this has been provided. The tribunal finds that there has therefore been double counting and this charge should be removed from the estimate. If there are additional amounts due, then it will be open in any event for the Respondent to include this in the year end account with a proper explanation of the charge.
74. The tribunal determines that that no amount is payable by the Applicant pursuant to the estimate for the 2022 service charge year in relation to insurance for the year from October 2021.

Communal garden maintenance

75. The Applicant argues that an increase on the previous year is not justified given the quality issues then. The Respondent argues that the estimate is reasonable given the previous year's costs. The tribunal has found that the costs for 2021/22 were payable and reasonable. On the basis of that, it finds the estimate for this year to be reasonable.
76. The tribunal determines that the estimated cost for communal garden maintenance for the 2022 service charge year is reasonable and payable.

Installation of safety precaution for pavement

77. The Applicant explained that the residents have been pushing the developer to do these works, which he argues need to be done. However, these discussions have not been finalised or the work carried out. The Respondent argues that these are works which have been pushed for by residents and so an estimate should be included. The tribunal finds that including an estimate for these works at this level is reasonable, given the lack of certainty as to whether the developer will do the works. It notes that the developer might do the works, but this will result in a future credit against the estimated expenditure.
78. The tribunal determines that the estimated costs for the installation of a safety precaution for a pavement for the 2022 service charge year is reasonable and payable.

Management fees for external parts and internal parts September 2022/2023

79. The tribunal has again considered both these charges together. The Applicant argues that these have been labelled as 2021/22 charges and so are double counted with the previous year. The tribunal accepts that this is merely a mislabelling issue and that these fees relate to 2022/23. It has applied the same approach as for 2021/22 and therefore finds, given the communication failures, the wrongly issued invoices and the chasing for payment that a fee at the same level as determined for the previous year is reasonable. It therefore determines a reasonable fee is £155 plus VAT per flat in aggregate.
80. The tribunal determines that the aggregate management fee payable by the Applicant for the 2022 service charge year is £155 plus VAT.

Repair funds (external and internal)

81. The Applicant argued that there was no right for the Respondent to collect and maintain a repair or sinking fund under the lease but now accepts that this is within schedule 6, as referred to above. He has also argued that this was unnecessary for a new development with a ten year warranty. The Respondent argued that this is payable under the lease and helps ensure there are sufficient funds on account for repair. The tribunal agrees that a repair fund helps smooth costs and the Respondent is entitled to establish one. In addition, it finds the amount payable to it to be reasonable
82. The tribunal determines that the contributions to external and internal repair funds estimated for the 2022 service charge year are reasonable and payable.

Window cleaning

83. The Applicant applied the same arguments for the 2022 estimate as he did for the actual cost for 2021. The Respondent argues that it is a reasonable estimate based on previous years' costs. The tribunal reached the same conclusions as for 2021 and so found the estimate payable and reasonable.
84. The tribunal determines that the estimated cost of window cleaning demanded in the 2022 service charge year is reasonable and payable.

Common Part Electricity

85. The Applicant argues that the estimate for common parts electricity for the 2022 service charge year has been based on the 2021 figure which he argues was grossly inflated. The Respondent argues that basing the estimate on the previous year's figure is reasonable. The tribunal has found that the previous year's figure was inflated and so finds that the estimate for 2022 should reflect the previous year's figure as determined

by the tribunal above. This was £2,134.54 plus VAT. It has increased that amount to £2,500 to reflect increases in electricity prices.

86. The tribunal determines that a reasonable estimate of the Applicant's contribution towards common parts electricity for the 2022 service charge year is a fair and reasonable proportion of £2,500 plus VAT.

Applications under s.20C and paragraph 5A

87. The Applicant has applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("Section 20C") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A").

88. The relevant part of Section 20C reads as follows:-

(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 ... the First-tier Tribunal ... 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...".

89. The relevant part of Paragraph 5A reads as follows:-

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

90. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicant as an administration charge under the Lease.

91. In this case, the Applicant has been successful on the biggest substantive issues, in particular the identity of the freeholder and the incorrectly served invoices. The Respondent has not fully engaged in the process, for example by not providing confirmation that Eagerstates Limited was appointed to act on his behalf and not attending the hearing. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The tribunal therefore make an order in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

92. For the same reasons as stated above in relation to the Section 20C cost application, the Applicant should not have to pay any of the Respondent's costs in opposing the application. The tribunal therefore makes an order in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Lease.

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
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.