



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

Case reference : **LON/00AH/LSC/2023/0050**

Property : **Flats 1, 3, 4, 8, 22, 26, 32, 33, 34 & 36
Calum Court, 34 High Street, Purley,
CR8 2FR**

Applicants : **1) Ms D Crosswell (Flat 1)
2) Ms A Dimache & Mr M Sirghi (Flat 3)
3) Mr L Kurumoorthy (Flat 4)
4) Ms A Reade & Mr M A Shaikh (Flat 8)
5) Mr R Davies (Flat 22)
6) Mr L Bamsas and V Maciulyte (Flat
26)
7) Ms G Steel (Flat 32)
8) Mr S & Mrs R Armitage (Flat 33)
9) Mr J Glasgow & Mr D Goonjur (Flat
34)
10) Ms D Bereczki (Flat 36)**

Representative : **Mr J Glasgow (of flat 34)**

Respondent : **FS Design and Build Purley Ltd.**

Representative : **Mr R Turnbull of Counsel**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Mr O Dowty MRICS
Mr S Mason FRICS**

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

Date of decision : **17 November 2023**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that only 20% of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicants seek 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 Applicants in respect of the actual costs incurred in service charge years 2021-22 and the budgeted costs in 2022-23.

The hearing

2. The Applicants were represented by Mr Jordan Glasgow, one of the leaseholders of flat 34, at the hearing. The Respondent was represented by Mr Rory Turnbull of counsel.
3. A face-to-face hearing was held in this matter on 3 October 2023. At the start of the hearing, the applicants nominated Mr Glasgow as their representative, who was assisted by other leaseholders where needed. This was, however, rarely the case, as Mr Glasgow's submissions were ably made and were clearly the result of a large amount of work in preparation for the hearing.
4. The respondent sought to raise two preliminary issues. The first being that, as the actual accounts for the service charge year 2022-23 had not been completed at the time the application was made, the application was only capable of relating to the budgeted costs for that year.
5. Secondly, Mr Turnbull (on behalf of the respondent) sought to reinforce the general principle that Tribunals must make their decisions based on the evidence in front of them. The applicants, he submitted at paragraph 12 of his skeleton argument without reference to authority, were required to prove that the service charge was unreasonable, and the Tribunal must be satisfied of this on the evidence adduced.

6. With respect to Mr Turnbull, the Tribunal does not agree entirely with the position as written in his skeleton argument. The Tribunal considered that whilst it is certainly true that decisions must be made on the evidence before the Tribunal, the applicants were obliged to make out a case for unreasonability, rather than prove it, and the Tribunal is to exercise its professional skill and knowledge in its testing of evidence before it. On discussion of this matter at the hearing, it appeared that Mr Turnbull in fact agreed with the Tribunal's analysis.

The background

7. The property which is the subject of this application is a 2020s purpose built mixed use building on Purley High Street, with 3 commercial units on the Ground floor (occupied as a triple unit by a restaurant) and 36 residential flats above. The Tribunal understands they are all let on long leaseholds. There is a small external courtyard/garden area.
8. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The Applicants hold long leases of flats at the property which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge.
10. The mechanism through which service charges are payable by the applicants is too lengthy to quote in entirety in this decision. In summary, the Service Charge is set out at Schedule 8 of the lease (at pages 400-406 of the bundle), which splits service charge costs across an "estate" charge, a "block" charge and a "flat" charge. The applicants' liability to pay the service charge is provided by clause 2 of Schedule 5 of the lease (page 380 of the bundle), and the proportion which is to be paid for each of the "estate", "block" and "flat" charges is detailed at Schedule 9 (pages 407-408 of the bundle); the landlord's responsibilities, such as to provide summaries and calculations of the service charge, is set out in clause 4 of Schedule 7 (pages 396 to 399 of the bundle).
11. Whilst somewhat complicated, the basic arrangement of the service charge mechanism, and the proportion charged to leaseholders for the various costs, is not in dispute. In essence, a budget figure is produced against which leaseholders must pay their proportion quarterly in advance, and an actual figure and set of accounts is produced on the conclusion of each service charge year – though the applicants note the latter has not been done promptly in this instance. Service charge years run from 1st April to 31st March each year.

The issues

12. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and reasonableness of service charges for 2021-22 relating to Accountancy, External Repairs, General Repairs, Cleaning, Doors/Intercoms/Lift/Telephone, Gardening, Gutters & Drains, Window Cleaning & Management Fees.
 - (ii) The applicants also raised the payability and reasonableness of the budgeted figures for 2022-23 in their application.
13. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.
14. Where the Tribunal has determined an amount is payable by the leaseholders, it is payable as per their respective apportioned percentage contributions as set out in their leases.
15. Neither party provided any sworn witness evidence, and instead the Tribunal was reliant, in making its decision, on the contents of the Scott Schedule provided by the parties (at pages 80 to 97 of the bundle), in addition to the invoices and other documents provided.

Accountancy - £1,600 claimed

16. The landlord claimed that £1,600 of costs had been incurred in the preparation of accounts. An invoice was provided at page 111 of the bundle in support of that amount.
17. The applicants did not contest the payability of accountancy fees. Instead, they submitted that, whilst £1,600 would be a reasonable figure if the work were carried out well, the quality of the work was poor, and this meant that £1,600 was an unreasonable amount. Prior to the hearing, the respondent had already accepted a number of items were not chargeable, and the applicants submitted that this meant the accountancy work had been of a poor quality as those costs should not have featured in the accounts to begin with.
18. In addition, the applicants noted that the accounts were said to be based on bookkeeping carried out by the managing agents.
19. The respondent, for its part, submitted that the applicants had conceded accountancy fees were payable. The amount claimed was the actual cost, and the applicants had not provided any alternative quotes. The fact the respondent had conceded items before appearing at Tribunal was to its credit.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of Accountancy Fees in 2021-22 is £1,600.

Reasons for the tribunal's decision

21. The applicants accepted that a figure of £1,600 would be reasonable, were the accounting work carried out to a reasonable standard. Instead, they submit it was of a low quality as the landlord has conceded certain charges should not have been in the service charge budget. The Tribunal notes their further point regarding the accounts being based on book keeping carried out by the managing agents, but this does not appear to be directly relevant to the question of reasonability.
22. The decision as to what is chargeable under the leases is not generally a matter for an accountant - rather it is information they are provided by their clients. That the respondent has accepted some of those items were not chargeable is therefore not an indication that the accountant performed poorly. The Tribunal therefore finds that the accountant's work was of a satisfactory quality. Accordingly, the tenant having conceded the basic reasonability of the amount claimed, which appears to the Tribunal to be within a reasonable range, the Tribunal finds that £1,600 is payable for the accountants' fees.

Building – External Repairs: £9,137.50 claimed

23. The landlord initially claimed a total of £9,137.50, but was unable to locate an invoice for £273.94. The landlord therefore conceded a revised figure of £8,863.56. This was supported by invoices at pages 113 – 144 of the bundle.
24. The applicants challenged both the reasonability of the costs, and the payability of a number of them under the lease.
25. The applicants' general position was that, given practical completion of the construction of the property was not achieved until May 2021, the amount of external repairs carried out in 2021-22 should not have been so high. A number of the invoices provided were dated in 2020 and before practical completion, and therefore should not have appeared in the 2021-22 accounts. Any defects should have been under warranty, or the subject of an insurance claim, and the applicants had been provided with no explanation as to why they hadn't been. Further, the applicants disputed payability under the service charge for works they considered were part of the development of the building, such as for the installation of a fire escape, the costs of which were in some cases incurred several months before the date of practical completion.

26. The respondent provided very little by way of reply to these points. Instead, other than an irrelevant reference to drains at the property (the invoices for which were not used in support of this heading, following clarification of this at the hearing), the respondent had simply responded that the invoices were provided, and they relied upon them.

The tribunal's decision

27. The tribunal determines that the amount payable in respect of External Repairs is £3,495.16.

Reasons for the tribunal's decision

28. The position at the property regarding leases, and the date of their signing, is somewhat unusual. Despite practical completion of the building not being until some point in May 2021 (the first leaseholder apparently moving in on 31 May 2021), the applicants' leases had been signed in April 2020. Those leases require a service charge be paid from the date of signing. That being said, no service charge appears to have been charged for the year 2020-21, and instead a number of the costs that were incurred in that year (covered by the invoices from pages 113-122 of the bundle) have been charged in the 2021-22 service charge year instead.
29. This is obviously an unusual position, and one regarding which the Tribunal was not provided any assistance by the respondent in terms of why they say the pre-practical completion costs they have provided for in the 2021-22 accounts are chargeable to the tenants. This is despite the applicant clearly raising this point in advance of the hearing, the Tribunal further raising this issue with the respondent at the hearing, inviting counsel to consider whether they had any submissions to make regarding it over the lunch break and specifically asking for those submissions at the end of the hearing. This is not a criticism of Mr Turnbull, whose instructions in this regard extended merely to the fact that the invoices had been provided and that the invoice dates were as they were.
30. The Tribunal therefore had to do the best it could with the information available to it. However, this was not a straightforward task as the respondent had not explained what clause of the lease they relied upon in saying these pre-completion construction works were service charge items. In doing so, the Tribunal considered the contents of Schedule 8 of the lease provided (at page 400-406 of the bundle), which lists those items for which service charges are payable. The most relevant clause for these costs appears to be clause 1 of part B of Schedule 8, at page 402:

1 To maintain renew replace and keep in good and substantial repair and condition or to procure the maintenance renewal

replacement keeping in good order and substantial repair and condition of (save in so far as damage has been caused by an Insured Risk and insurance monies are irrecoverable by any act or default of the Tenant): -

1.1 The main structure of the Block including the roofs gutters rainwater pipes foundations floors and walls bounding individual Flats therein and all external parts of the Block including all structural parts of the balconies and terraces on the Block (if any) together with all decorative parts together with all structural parts of the same

1.2 All external doors and window frames not forming part of the demise of any of the Flats in the Block

31. The Tribunal considered that, whilst this clause did cover repairs at the property, it did not cover works of initial construction of the building. The works of construction prior to practical completion were not repairs – they were the construction of the building in the first place. As such, the Tribunal found these costs were not chargeable under this clause of Schedule 8.
32. The Tribunal could not identify any other clauses in Schedule 8 which would allow for the recovery of the costs of initial construction. The Tribunal therefore found, doing the best it could with the information available to it, that any works of construction dated prior to the date of practical completion were not chargeable under the lease.
33. The Tribunal notes that some of the invoices provided are dated in 2020, but have been demanded in the 2021-22 service charge year. In general terms there is no prohibition on this being done, provided that the requirements of Section 20b (in essence that they are notified within 18 months of expenditure) of the Landlord and Tenant Act 1985 are complied with in relation to those costs. No substantial argument regarding this was raised by either party and accordingly the Tribunal considered that costs should not be excluded from the 2021-22 service charge on this basis alone.
34. The Tribunal then considered each invoice in turn. The Tribunal's considerations and determinations regarding each invoice are as below, with page references provided to the bundle.
35. Pages 113-114; Steel Gates & Stairs Ltd; £2,382. Invoice Date 1/11/2020

This invoice covers the installation of a fire escape staircase. The Tribunal finds this is a work of initial construction which predates practical completion of the property. It is therefore not chargeable under the lease for the reasons given above.

36. Page 115; GM Maintenance; £65; invoice date 17/9/20

This invoice relates to the replacement of a socket on the 3rd floor. These were works of repair rather than of initial construction of the building. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

37. Page 116; GM Maintenance; £45; invoice date 30/9/20

This invoice relates to the re-attaching of a carpet trim on the 4th floor. These were works of repair rather than of initial construction of the building. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

38. Page 117; Affordable Home Improvements; £1920; 13 October 2020.

This invoice relates to glazing works and signage. The Tribunal has been provided with no further information regarding these works. Doing the best it can with the information available to it, the Tribunal finds these were works of initial construction. These works predate practical completion of the property. Accordingly, the Tribunal finds this amount is not chargeable under the lease for the reasons given above.

39. Page 118; VSA Group; £587.40; invoice date 27/10/2020

This invoice relates to the relaying of front edging to the pavement. The Tribunal has been provided with no further information regarding these works. Doing the best it can with the information available to it, the Tribunal finds these were works of initial construction. These works predate practical completion of the property. Accordingly, the Tribunal finds this amount is not chargeable under the lease for the reasons given above.

40. Page 119; GM Maintenance; £70; invoice date 28/10/2020

This invoice relates to replacing the bottom lock on an emergency door. These were works of repair rather than of initial construction of the building. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

41. Page 120; GM Maintenance; £45; invoice date 29/10/2020

This invoice relates to unblocking a manhole. These were works of repair rather than of initial construction of the building. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

42. Page 121; GM Maintenance; £45; invoice date 7/1/2021

This invoice relates to responding to an alarm call out. These were works of repair rather than of initial construction of the building. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

43. Page 122; GM Maintenance; £45; invoice date 29/1/2021

This invoice also relates to responding to an alarm call out. These were works of repair rather than of initial construction of the building. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

44. Page 123; GM Maintenance; £40; invoice date 3/4/2021

This invoice relates to resetting the lift. These were works of repair rather than of initial construction of the building. The applicant queried why this was performed by GM Maintenance rather than by the lift company, given there must be an arrangement with them. The Tribunal found that it was likely a lift company would have charged significantly more than £40 to attend a call out, and therefore that the cost was reasonably incurred and chargeable.

45. Page 124; The London Sign Company; £750; invoice date 10/5/2021

This invoice relates to the installation of an illuminated sign at the property. The applicants submitted that this was a sign to tell people what flats were on what floors, and should have been part of the building of the property. Further, it was not an external repair and should not be classified as such.

The Respondent submitted that “Providing maintaining repairing and renewing signs and notices in or upon the Estate” is specifically provided for in paragraph 11 of Part A of Schedule 8 of the lease (at page 401 of the bundle, which sets out chargeable service charge items).

Whilst the Tribunal appreciated the tenant's point regarding signage often being part of the construction of a building, it is not an essential step in constructing a building. In addition, the service charge provisions of the lease specifically allow for the cost of signage to be passed on to leaseholders. In terms of the submissions regarding this being an external repair, the Tribunal did not see the relevance of this.

Accordingly, the Tribunal found this was not a work of initial construction of the building, and that therefore the cost was reasonably incurred and payable.

46. Page 125; GM Maintenance; £35; invoice date 26/5/2021

This invoice relates to unblocking drains behind Las Fuentes (the restaurant at ground floor level of the building). No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

47. Page 126; GM Maintenance; £85; invoice date 27/5/21

This invoice relates to replacing a manhole cover "behind office". No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

48. Page 127; GM Maintenance; £45; invoice date 28/5/22

This invoice relates to repairs to a gate to prevent it catching. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

49. Page 128; GM Maintenance; £110; invoice date 22/6/22

This invoice relates to replacing a lock on the water meter room. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they

could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

50. Page 129; GM Maintenance; £55; invoice date 29/6/22

This invoice relates to fixing the bin shed door. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

51. Page 130; GM Maintenance; £45; invoice date 14/7/22

This invoice relates to fixing the fire door on the first floor, which was not closing. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

52. Page 131; GM Maintenance; £40; invoice date 15/7/22

This invoice relates to fixing the communal second door, which was not latching. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

53. Page 132; GM Maintenance; £70; invoice date 25/8/22

This invoice relates to replacing the lock on the bike shed. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge

year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

54. Page 133; GM Maintenance; £45; invoice date 1/9/2021

This invoice relates to the adjusting of a fire door on the 4th floor. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds this cost is reasonable, and was reasonably incurred.

55. Page 134; ProInstallAV; £479; invoice date 16/6/2021

This invoice relates to a TV and associated wall bracket. The applicant submits that this is the TV in the management office for the landlord, and that therefore this is not chargeable. The fact this was a TV for the management office was not denied by the respondents. The Tribunal cannot identify a ground for these costs to be passed on to service charge payers in the lease. Accordingly, the Tribunal finds that they are not payable.

56. Page 135; GM Maintenance; £140; invoice date 10/9/2021

This invoice relates to the replacement of a communal light on the 5th floor. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds the cost is reasonable, and was reasonably incurred.

57. Page 136; Actionsigns; £774; invoice date 23/9/2021

The applicants averred that this cost relates to a sign in the corridor of the block which says "Calum Court". Otherwise, the applicants challenge to this cost and the respondent's reply are the same as for the invoice at paragraph 45 above. Accordingly, the Tribunal finds, for the same reasons as in paragraph 43, that the cost of £774 was reasonably incurred and is payable.

58. Page 137; WR's Maintenance; £425; invoice date 21/10/2021

This invoice relates to the repairing of boxing around a stack pipe, fixing other areas of the wall and undercoat painting. No specific challenge was raised to this invoice. Whilst the Tribunal assumes this would likely fall under the tenant's general position regarding works which should have been covered by a warranty or insurance claim, without specific challenge from the applicant the Tribunal finds that the sum of £425 is reasonable and payable, given that warranty and insurance claims are not without difficulty and, in the latter case, financial impact.

59. Page 138; GM Maintenance; £45; invoice date 26/11/2022

This invoice relates to works to the main gate. The Tribunal notes the invoice is dated after the end of the 2021-22 service charge year, however this does not necessarily mean it should not be included in the 2021-22 year. The landlord clearly thought it correct to include this invoice in the 2021-22 service charge year, whereas they could just as easily have included it in the 2022-23 year. Neither party provided any submissions regarding the dating of this invoice, nor any specific challenge to its contents otherwise. Accordingly, on the evidence available to it, the Tribunal finds this cost is reasonable, and was reasonably incurred.

60. Page 139; GM Maintenance; £175; invoice date 6/1/2022

This invoice relates to the fixing of a leak in the boiler room. No specific challenge was raised to this invoice. The amount charged and the work carried out appear reasonable. Accordingly, the Tribunal finds the cost is reasonable, and was reasonably incurred.

61. Page 140; GM Maintenance; £25; invoice date 7/1/2022

This invoice relates to the resetting of CCTV. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds the cost is reasonable, and was reasonably incurred.

62. Page 141; GM Maintenance; £40; invoice date 28/1/2022

This invoice relates to replacing the lock on an electric cupboard. No specific challenge was raised to this invoice, the applicants having stated generally that they were not concerned by invoices for very small amounts of money. Accordingly, the Tribunal finds the cost is reasonable, and was reasonably incurred.

63. Page 142; GM Maintenance; £35; invoice date 23/2/2022

This invoice relates to resetting the lift. The applicant raised an objection to GM Maintenance resetting the lift, as summarised in paragraph 44. For the same reasons as given in that paragraph, the Tribunal finds the sum of £35 was reasonably incurred and is payable.

64. Page 143; GM Maintenance; £51.16 & Page 144; GM Maintenance; £150 – both invoices dated 24/3/2022

Both of these invoices are for painting communal parts. The Tribunal is somewhat surprised there are two invoices, from the same company, for the same amount on the same day. However, there has been no specific challenge raised to this by the applicants. In light of the fact an invoice has been provided for both of these costs, the Tribunal finds, doing the best it can with the evidence available to it, that these costs were reasonably incurred and payable.

65. The Tribunal notes for completeness that it has not neglected to consider the submissions made by the applicants regarding GM Maintenance. Those, unevicenced, submissions were that GM Maintenance is in fact an enterprise of one of the landlord's employees. The invoices were hand-written. The applicants averred that this was therefore the landlord seeking to maximise charges by instructing his own employees, and that the works should have been covered by the management charge.
66. The Tribunal appreciates these submissions; however, there was no evidence provided of an improper relationship between GM Maintenance and the respondent, and in any case there is nothing in general terms prohibited about instructing someone to carry out work who may work for you in another capacity. If the works GM maintenance carried out were reasonably required, chargeable under the lease and the amount charged is reasonable, then they are a valid service charge item. Whilst it is certainly true the invoices are of a low quality, the amounts charged by GM Maintenance for their work are also low, and it is not unusual for invoices for low cost work to be relatively poor.
67. The Tribunal therefore found there was no reason to treat those invoices any differently from invoices provided by other contractors.

Flat General Repairs: £584.52 claimed

68. The landlord charged £584.52 to the service charge account for this item, for which four invoices were provided at pages 146-149.
69. The applicants accepted an invoice for £75 from PLP Gas and Heating was payable in full, however they contested the payability of the remaining three.

70. There is considerable overlap in the disputes regarding this head of cost and the previous one, with the applicants again disputing the reasonability of 2021-22 service charge items invoiced in 2020, prior to practical completion which appear to be largely works of construction. The respondent averred that these were the costs and are therefore payable.

The tribunal's decision

71. The tribunal determines that the amount payable in respect of flat general repairs is £120.

Reasons for the tribunal's decision

72. The Tribunal's decision in this matter was based on the same considerations as its decision under the previous head. As set out in paragraph 31 above, the Tribunal found that any construction works prior to the date of practical completion were not chargeable under the lease.

73. The Tribunal therefore again considered each invoice in turn. The Tribunal's considerations are as below, with page references provided to the bundle.

74. Page 146; Swanenviro; £240; invoice date 30/11/2020

This invoice covers the installation of an automatic air module. The Tribunal finds this is a work of construction which predates practical completion of the property. It is therefore not chargeable under the lease in the 2021-22 Service Charge year or otherwise.

75. Page 147; Floorsave; £209.52; invoice date 21/9/2020

This invoice covers the installation of T bars. T bars are placed at thresholds to connect with flooring on either side. The Tribunal finds this is a work of construction which predates practical completion of the property. It is therefore not chargeable under the lease in the 2021-22 Service Charge year or otherwise.

76. Page 148; GM Maintenance; £45; invoice date 13/10/2020

This invoice relates to resetting a lift out of hours. The applicant raised an objection to GM Maintenance resetting the lift, as summarised in paragraph 44. For the same reasons as given in that paragraph, the Tribunal finds the sum of £45 was reasonably incurred and is payable.

77. Page 149; PLP Gas and Heating LTD; £75; invoice date 21/10/2021

The applicants concede this is payable. The Tribunal therefore has nothing to determine in regard to this invoice.

Cleaning - £1,147 claimed

78. The landlord charged £1,147 to the service charge account for cleaning, but in fact provided invoices totalling £1,148.50 at pages 151 to 157 of the bundle.
79. The applicants did not dispute the payability of cleaning charges, instead disputing the reasonableness of the costs given the alleged poor quality of the cleaning provided.
80. The applicants provided photographs (at pages 324 to 344 of the bundle) as part of their evidence, in part to show that the cleaning had been of a poor standard, which the Tribunal felt tended to support that accusation. The applicant had sought two quotes, copies of which were provided, from Globus Cleaning Services and Rosegold Cleaning Services. These quotes were for £648 (page 415) and £565 (page 417) respectively. The applicants averred that they would be willing to pay £700.
81. The respondent's counsel Mr Turnbull did not have specific instruction on how the cleaning cost was arrived at, or the make up of it, though he noted that some of the works appeared to go beyond normal cleaning and it was possible the cleaning might include window cleaning or exterior cleaning. The respondent's position was that the amount claimed was a reasonable figure for a year's cleaning.

The tribunal's decision

82. The tribunal determines that the amount payable in respect of cleaning is £700.

Reasons for the tribunal's decision

83. The applicants set out their dissatisfaction with the quality of the cleaning, with photographs in support. The Tribunal found that, on the evidence available to it, the cleaning had been of a poor quality. Further, the applicants had provided quotes from two companies for much less than was being charged. Whilst the Tribunal notes Mr Turnbull's comments, they were largely speculative and his client has simply failed to elaborate on this point.
84. The tribunal therefore finds that the amount charged of £1,147 is not reasonable.

85. In light of the fact that the applicant would be willing to pay £700, the Tribunal finds that that amount is reasonable and payable. However, the Tribunal notes this is above both of the quotes they have obtained elsewhere.

Doors/Intercoms/Lift/Telephone - £145.66 claimed

86. The applicants submitted that there have been several issues with the lift telephone line, which have caused dangerous occurrences. The applicants did not challenge the payability of this item were the telephone line in working order, but submitted that it did not work and accordingly paying any amount was unreasonable. The respondent said it relied on the invoices that had been provided totalling £109.34, provided at pages 159 to 164 of the bundle. The landlord could not find an invoice for a payment of £36.32, and therefore conceded that sum to arrive at a revised figure of £109.34.

The tribunal's decision

87. The tribunal determines that the amount payable in respect of the lift telephone is £109.34.

Reasons for the tribunal's decision

88. Whilst the Tribunal notes the submissions of the tenant, regarding issues with the telephone line, the invoices provided are bills from BT. The lift clearly needs an emergency telephone line, and that must be paid for. It is not available to the landlord to not have one, and therefore the basic costs charged by BT in connection with it are reasonable as far as the landlord's position is concerned. That being said, late charges and other similar costs are clearly not reasonable, however these appear not to be being recharged to the applicants by the respondent.
89. The Tribunal therefore finds that the sum of £109.34 is reasonable and payable.

Gardening - £2,533.75 claimed

90. The landlord claimed £2,533.75 for gardening, for which invoices were provided to that total, at pages 166 to 176. However, on closer examination a number of these invoices relate either wholly or in part to "inside cleaning" (at pages 166, 167, 170, 171, 172 & 173). Once these amounts are removed from the total, the landlord has in fact provided invoices for £1,543.75 of gardening costs.
91. The applicant did not dispute the payability of gardening under the lease, but they submitted that the total charged was significantly too high for

such a small area. They would be willing to pay £900. They had obtained quotes from other gardening firms for between £62 a visit at a suggested frequency of every 4-6 weeks, and £100 (+ VAT) per visit at a suggested monthly frequency, at pages 413 & 414 of the bundle respectively.

92. The respondent's counsel said they did not have instructions as to reasonableness, merely relying on the fact that the invoices had been provided and that gardening was a reasonable cost.

The tribunal's decision

93. The tribunal determines that the amount payable in respect of gardening is £1,543.75.

Reasons for the tribunal's decision

94. The respondent's position was that they had provided invoices totalling £2,533.75, but as noted above only £1,543.75 of the total related to gardening. When broken down, this was made up of £610 for general gardening, and £933.75 as a one-off cost for pressure washing with chemicals to remove mortar.
95. The Tribunal considered that the cost of £610 for the regular gardening was below the quotes and submissions of the applicants, and it therefore found that cost was reasonable. It also found that the additional £933.75 as a one-off cost for pressure washing with chemicals to remove mortar was reasonable, and reasonably described as gardening.
96. Accordingly, the Tribunal determined that £1,543.75 was payable.

Gutters & Drains - £974 claimed

97. The landlord charged £974 to the service charge account, for which they provided invoices for the total at pages 178-182 of the bundle.
98. The applicants did not challenge the payability of gutter and drain works, but submitted that the amount charged was excessive for a new building, and that given the repeated issues with the gutters and drains they would have expected an investigation be carried out as to why. In addition, the applicants noted that the quality of the invoices provided was very poor. The applicants were unable to obtain alternative quotes, or indeed investigate the matter further due to a lack of information provided.
99. The respondent averred that a report had not been carried out as it was unnecessary. The works were reasonable, and their sum is a reasonable amount.

The tribunal's decision

100. The tribunal determines that the amount payable in respect of gutters and drains is £824.

Reasons for the tribunal's decision

101. The respondent submitted that obtaining reports regarding the issue would have incurred more cost and might well have been unreasonable; which in the main the Tribunal agreed with. However, it is clearly not sufficient to provide an invoice that merely says "Drains 150.00", as the invoice dated 30 July 2021 from Paul Rogers at page 178 of the bundle does, with no further explanation being provided. This left the applicants – and indeed the Tribunal - with no indication of what the works related to. Accordingly, the Tribunal found that amount was not chargeable, as the landlord had failed to provide a sufficient explanation of what that invoice related to.
102. The Tribunal took note of the applicants' submissions. However, whilst it is true the building is new, there are often gutter and drain issues at properties old and new, and the Tribunal did not consider that this was so out of the ordinary as to be evidence of unreasonability. The applicants had provided no evidence to show that the cost was unreasonable, and accordingly the Tribunal determined that all of the costs, with the exception of the invoice at page 178, were reasonable and payable.

Window Cleaning - £570 claimed

103. The landlord charged £570 to the service charge account, for which invoices to that total are provided at pages 186 to 188 of the bundle.
104. The applicants did not challenge the payability of window cleaning, but instead submitted that no one had ever cleaned the windows, and that therefore the costs were unreasonable.
105. The respondent submitted that they had provided invoices which served as evidence of those works being undertaken. The respondent noted that the applicants had provided a quote at page 416 of the bundle which was for an annual figure of £1,720, which is much higher than what the landlord has charged. However, it was admittedly possible this involved more work than had been carried out. It did not, however, demonstrate that the amount charged was unreasonable.

The tribunal's decision

106. The tribunal determines that the amount payable in respect of window cleaning is £570.

Reasons for the tribunal's decision

107. The applicants did not provide any evidence as to reasonability, except for a quote for a much higher amount than had actually been incurred by the landlord. Whilst the Tribunal appreciates none of the applicants has ever observed window cleaning taking place, there are 3 invoices in the bundle from 2 apparently independent companies which are for exactly that. The applicants' position is therefore an accusation of dishonesty against those companies – and in the absence of hard evidence of this the Tribunal considered it was not made out. Accordingly, the Tribunal found on the balance of probabilities that the work had been carried out.
108. The applicant's challenge to this item was solely based on the works having not been conducted. The Tribunal, having found that they had, considered that the cost was reasonable and payable.

Management Fee - £16,800 claimed

109. The landlord had charged £16,800 to the service charge account for management fees. Invoices were provided to that total, at pages 189 and 190 of the bundle. For a period in the 2021-22 service charge year, the respondent had managed the property. Before then, the property had been managed by The Solutionists Ltd for a short time.
110. The applicants did not dispute the payability of managing fees. Instead, they submitted that the managing fees claimed would have been reasonable if they had received an appropriate level of service, but they had not. Despite having an office on site, the landlord's staff were rarely present. Security of the leaseholders data had been poor, and there have been several other issues.
111. The applicants further submitted that they have made a complaint, at page 422 of their bundle, to which they never received a reply. In addition, when the applicants had tried to gain assistance from their MP and the local council, the landlord had refused to speak with them.
112. The applicants submitted that, in light of the poor quality of the management, a figure of £10,000 would be reasonable as a management fee.
113. The respondent submitted that approximately £430 per unit is a reasonable sum for a building such as this. They accepted there had been issues with Ms Foley (of FS properties) before, but that in general emails had been responded to relatively promptly. The Tribunal should consider the evidence in the round.

The tribunal's decision

114. The tribunal determines that the amount payable in respect of managing agent's fees is £10,000.

Reasons for the tribunal's decision

115. In the Tribunal's experience, the management fee charged of approximately £430 per unit is a high one for the area. For this amount of money, leaseholders should expect a very high level of service be provided.
116. Instead, it is clear from the applicants' submissions and from the wealth of issues raised in connection with the present matter that that standard of service has been poor. The respondent averred that the key question was whether the landlord had complied with the Tribunal's directions, but good property management is not waiting until leaseholders raise disputes with the Tribunal and then merely complying with directions. Property managers should seek to resolve issues promptly and effectively by providing assistance and information to their service charge payers.
117. The respondent also accepted there had been issues with the performance of Ms Foley, but in their comments on the Scott Schedule (at page 96 of the bundle) it was made quite clear that at that point the respondent blamed the applicants for her leaving the respondent's employ, as her efforts had been "unappreciated". It is difficult to square these two positions with each other, and the Tribunal felt that the comments in the Scott Schedule were an attempt to blame the applicants for the poor performance of the respondent's staff.
118. The respondent has conceded a number of items in advance of the hearing, which again are offered as examples of their reasonableness, but they have only been conceded after these proceedings were brought.
119. The invoice for management fees at page 189 of the bundle speaks to the quality of management services provided itself. It is undated, and states it is for the management fee at the property for the period 2021-22. However, there was another managing agent for part of that year, and so this management period did not cover the whole of that service charge year. This was an invoice for a significant sum of money (£14,138.22); a good managing agent would have ensured it was dated and otherwise correctly set out the work conducted before accepting it from a third party, let alone issuing it themselves.
120. The tribunal therefore finds that the level of service provided has been of a poor standard, and the amount charged of £16,800 is not reasonable as a result.

121. Whilst noting that it was still slightly high for the area given the poor level of service provided, the Tribunal felt that the applicants' position of £10,000 for managing agents fees (which equates to £256.41 per unit over the 36 residential and 3 commercial units) was reasonable.
122. The Tribunal therefore determined that £10,000 was reasonable and payable for the management fees.

2023 Budget Figures

123. The application form in this matter also referred to the cost of a then future year, specifically being 2022-23. As was highlighted by the respondent at the start of the hearing, that application was only therefore capable of referring to the budgeted figures for that year, as the actual figures were not available when the application was made. However, the applicant had in any case not pursued this part of their application, and the Scott Schedule only related to 2021-22.
124. The actual figures are now available for the year 2022-23, and so the Tribunal asked the parties whether they wished the Tribunal to consider that actual figures for 2022-23. In summary of what was an extensive discussion, whilst the parties indicated they might ideally have liked this, as the invoices and other evidence before the Tribunal related to the 2021-22 year it was decided that the Tribunal was not able to determine the actual figures for the 2022-23 year. This would therefore require a further application be made for that year if it was desired.
125. This therefore left the 2022-23 budget figure determination a largely academic point, which the applicants present might have withdrawn, however they were unable to do so as one of the applicants was not present.
126. Accordingly, it was agreed by the parties that the Tribunal would consider that part of the application for what it was, doing the best it could with what had been provided to it – and bearing in mind the determinations it had made regarding the 2021-22 actual costs.
127. The information provided to the Tribunal by the applicants in regard to 2022-23 was very thin on the ground, and did not leave the Tribunal with much scope. Simply put, the applicants had not prosecuted this part of their application. Accordingly, the Tribunal felt it had not been shown that the budgeted figures were unreasonable. Whilst some costs were slightly higher than the Tribunal had determined in its determination of the actual costs for the 2021-22 year, this could have been down to any number of factors. In particular, the management fees and cleaning costs in the budget for 2022-23 were somewhat higher than the Tribunal had determined reasonable in the 2021-22 service charge year, however both of these costs had been reduced in the Tribunal's determination in part

due to the poor quality of their being carried out. It would be unusual to budget on the basis that one's cleaners and managing agents were to perform poorly, and it therefore appeared reasonable to the Tribunal that the budgeted figures for these items was slightly higher.

128. The Tribunal was at pains to make clear that its determination of the budget figures for 2022-23 would have no bearing whatsoever on any application subsequently made by either party as regards the actual costs for that year. That would be a new application which would be considered entirely afresh.

Application under s.20C and refund of fees

129. The applicants made an application for a refund of the fees that they had paid in respect of the hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.
130. In the application form, the applicants applied for an order under section 20C of the 1985 Act. Having heard 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. However - whilst the Tribunal considers that, in relation to 2021-22, the applicant has been largely successful – their failure to either withdraw or pursue the 2022-23 budget figures in advance of the hearing means it would be unequitable for the landlord to be prohibited from recovering all of their costs in respect of this part of the claim.
131. The respondent noted that the 2022-23 year was, strictly, half of their application. However, as a direct consequence of its not being pursued, in reality the costs associated with the respondent's defending of the 2022-23 budget figures would have been much lower than those associated with the 2021-22 year.
132. Accordingly, the Tribunal considers it just and equitable that an order be made under section 20C of the 1985 Act, so that the respondent may only pass on 20% (20 per cent) of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Mr O Dowty MRICS

Date: 17 November 2023

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).