FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/21UD/LSC/2023/0085**
Property	**:**	**213 Priory Road, Hastings TN34 3JB**
Applicant	**:**	**Jodie Young**
Representative	**:**	**Kevin Bell**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Ronni Gurvits Managing Agent, Eagerstates Ltd**
Type of Application	**:**	**Section 27A**
Tribunal Members	**:**	**Judge D Dovar Mr Reichel BSc MRICS Ms Wong**
Date and venue of Hearing	**:**	**23rd January 2024, Hybrid (Havant)**
Date of Decision	**:**	**8th February 2024**

DECISION

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1. This is an application under s.27A of the Landlord and Tenant Act 1985 for the determination of the payability of service charges for the years ending 2021 to 2024.

2. Mr Bell, the uncle of the Applicant, represented the Applicant and Mr Gurvits, managing agent for the Respondent, represented the Respondent; although he only did so for the purpose of pressing the Respondent's application to lift a debarring order and adjourn the final hearing. The Respondent did not attend and was unrepresented at the substantive hearing of this application.

Application to lift debarring order and adjourn the hearing

3. At the outset of the hearing the Tribunal considered an application dated 18th January 2024 from the Respondent to: (1) lift a debarring order made on 16th January 2024 and (2) to 'delay' the hearing.

Background

4. The substantive application under s.27A was made on June 2023. On 24th October 2023 directions were given for a case management hearing, which included at paragraph 13 for the parties to each provide a position statement. The Respondent did not comply with that direction.

5. On 8th November 2023, at the directions hearing which was attended by both parties, the Tribunal gave the following directions: it set the matter down for a final hearing on 23rd January 2024; the Respondent was to give disclosure by 15th November 2023; the Applicant was to provide her

statement of case and any supporting witness statement with documents by 29th November; the Respondent was to provide its statement of case with any supporting witness statement and documents by 20th December; and the Applicant could file a concise reply by 10th January 2024.

6. Some disclosure was given by the Respondent, but the Applicant was not satisfied with that. The Applicant served her statement of case with documents on 29th November 2023 in line with the directions. Following correspondence in which the Applicant remained dissatisfied with the disclosure given, a formal application was made to the Tribunal for disclosure on 11th December 2023 (with the Respondent copied into the application). On 20th December 2023, the Tribunal acceded to that application and made an order for disclosure on the basis that the Respondent had not fully complied with the original disclosure order. The Respondent did not appeal that decision and provided further disclosure in accordance with that order by 5th January 2023.

7. It appears that the parties did not immediately receive the Tribunal's order on 20th December, as on 22nd December the Respondent emailed the Tribunal in response to the application for disclosure saying '*We are due to send our statement of case but note the outstanding application to the Tribunal regarding documents required. Should we wait for the Order to be dealt with first?*', whilst the Tribunal did not respond, the Applicant did on the same day, saying '*If you are addressing me then you are already late and should send it forthwith. It was due on the 20th December.*'.

8. When the Respondent provided their additional disclosure on 5th January, in a covering email, it enquired '*With regards to the other directions, can these be re-issued as well? These need to be amended as the Applicant is only going to now be able to fully prepare their statement of case. This will also likely result in the hearing date being missed*'. There was no response to that enquiry.

9. On 8th January 2024, the Applicant made a formal application to debar the Respondent from taking any further part in the proceedings on the basis that they had failed to comply with the directions as to filing statements of case and witness evidence. A copy of the application was served on the Respondent at the same time. The standard form for applications to the Tribunal sets out at box 8, that if the application is not agreed, '*then you* [i.e. the Applicant] *must confirm that you have sent them a copy of this application and notify them that they must send a copy of any objection to the tribunal and to the applicant …'.* The Respondent made no objection to the application. Mr Gurvits said that they had not done as no directions had been given to make any objection.

10. On 16th January 2024, as a result of the defaults, a legal officer made an order debarring the Respondent from taking any further part in these proceedings and confirmed that the hearing remained listed for 23rd January 2024. The order provided for any application to lift the barring order be made within 7 days. Additionally, as the order had been made by a legal officer, it gave a 14 day period within which to have the matter reconsidered by a Judge. The Respondent made its application within the time limits of both.

The Application

11. The Respondent's application sets out the following:

    a. The time line was 'messed up' by the disclosure application and order, which meant that '*the Applicant then needed to amend their statement of case which meant the Respondent could simply not have provided a statement of case within the time of the original directions;*

    b. They had raised that point on 5th January, but had received no response;

    c. The Respondent had been prejudiced by '*the Applicant making multiple applications for disclosure*'; and

    d. There was no warning that such '*drastic action*' could result.

Approach to the Application

12. The application seeks two remedies. The first is to lift the debarring order, the second is to delay the hearing.

13. Whilst a refusal to lift the debarring order would inevitably mean that no adjournment should be given, the Tribunal considers that in order to properly assess the application, the first consideration is really whether to permit the Respondent further time to file statement of case and, if so advised, file evidence. If so, then naturally both the debarring order should be set aside and the hearing adjourned. If not, the Tribunal can

then consider whether there is any other reason to adjourn and whether the debarring order should be set aside.

14. Although not couched in such terms, this is in reality an application for relief from sanctions. The Respondent having failed to adhere to the timetable given on 8th November 2023, seeks permission for further time to provide such documents; otherwise there would be no point in adjourning the hearing. In approaching the issue in that manner, the Tribunal has considered the approach to relief from sanctions as provided for under the Civil Procedure Rules and *Denton v White* [2014] EWCA Civ 906 (an approach endorsed in the context of Tribunal procedure in *Martland v HMRC* [2018] UKUT 178 (TCC)).

15. The first enquiry is therefore whether there has been a serious and significant breach. Undoubtedly there has. The Respondent has wholly failed to adhere to the directions providing for statements of case and witness evidence. At one point Mr Gurvits appeared to suggest that the timetable and directions had been suspended as a result of the disclosure order. The is not the case, neither the disclosure order, nor any other order varied the directions and it is not possible to imply that that was the case. Indeed the two emails from the Respondent informally seeking a variation, were themselves confirmation that the timetable and directions were still running.

16. The second enquiry is whether there is a good reason for that breach. The Tribunal does not consider that the reason put forward by the Respondent is a good one. Mr Gurvitz in his submissions considered

that by reason of the application and order for disclosure, the directions timetable had effectively been postponed. He considered that given the new documents disclosed, the Applicant was bound to want to amend her statement of case (why else would she ask for and be given the documents, he asserted) and therefore it would be a waste of time and resources for the Respondent to provide its statement of case on 20th December, only to have to amend it at a later stage. He went further than that and was critical of the Tribunal for not seizing the matter and making new directions along those lines and ultimately sought to put the blame for the Respondent's failure to adhere to directions on the Tribunal. He did accept that no formal application had been made by the Respondent to amend the timetable or even to give the Respondent more time to file a statement of case and evidence.

17. It is worth noting that at no point has the Applicant sought to amend her statement of case, let alone intimate any intention to do so. In fact, the immediate response to the Respondent's enquiry on 22nd December as to whether the timetable should be adjusted was to effectively say 'no', point out that they were late already and request it be sent 'forthwith'. Indeed the Tribunal bears in mind that before the order for disclosure was made, the Respondent was already in breach of the directions timetable.

18. In light of that, it is difficult to see how the Respondent could have properly considered that its obligation to provide a statement of case by 20th December had fallen away. Indeed the basis of its enquiry was that the directions stood. It did not assert that they considered they had

actually been postponed. Likewise on 5th January 2024, when it asked, in a covering email whether the 'other directions' could be re-issued, that was on the basis that the directions were still operative. Again the failure to respond, cannot be taken to be an indication that that request had been acceded to.

19. At no point did the Respondent make a formal application to vary the directions, let alone specifically to have permission to file a statement of case and evidence out of time. The Respondent had no good explanation as to why it had not done so.

20. In order to ascertain whether any account should be taken of the ability of the Respondent to conduct litigation, the Tribunal made enquiries of Mr Gurvits' qualifications and his experience of Tribunal cases. It is noted that on his emails he has an LLM after his name and he confirmed that he is a qualified solicitor, although was anxious to point out that that was not his role with the Respondent, he was acting as managing agent. He was a little defensive over the number of tribunal cases he had been involved with, but it seems it may be around 100, if not more. The Tribunal was therefore satisfied that Mr Gurvits is sufficiently experienced with Tribunal procedure to understand the importance of directions and of adhering to timetables and of the need to make applications if the Respondent sought to amend a timetable. This should be contrasted with the Applicant, who was represented by her uncle, who could be considered, without any disrespect, to be a lay person, yet who made formal applications and managed to adhere to the directions timetable.

21. There was therefore no good reason for the breach.

22. The final consideration is whether notwithstanding the breach and lack of good reason, permission should be given by weighing up the various prejudices that would be caused by either outcome and the need to deal with the application justly. That includes the need for proceedings to be conducted efficiently and at a proportionate cost and to enforce compliance with rules, practice directions and orders.

23. Clearly the Respondent will be prejudiced if it is not able to present its case through a statement of case and evidence. Having complied with the directions order, it has however placed before the Tribunal the relevant documents in the case.

24. Mr Gurvits said that it would take, at a push, 7 days to provide the evidence and statement of case. It is unfortunate that that had not been done prior to the hearing. Had that happened, then they would not have needed to apply for an adjournment, but simply for permission to adduce the statement and evidence. It appears that rather than take a cautious approach and try to get their case ready for the hearing, they decided to increase the stakes by not preparing, so that the only alternative was to adjourn.

25. If permission is given, that would have caused the hearing to have been adjourned. That would be a loss of a hearing date, with the consequential prejudice to the Applicant of having her application delayed and the additional time and expense of attendance. It would also mean that the Tribunal's resources will be wasted in what is a

relatively low level claim, with the knock on impact not only to the Tribunal but also to other users of the Tribunal service.

26. The Tribunal is also mindful of the fact that the Respondent has also breached the original direction to provide a position statement and had failed to give proper disclosure. In respect of the latter, it was in fact their failure to provide proper disclosure in the first place, that then led them to say they considered the timetable had been postponed so the Applicant could deal with the new documents. That is a factor that weighs against them, to deal with it otherwise would be to permit them to take advantage of their own default and misplaced assumptions.

27. Whilst there is obvious prejudice to the Respondent in not being able to put forward their own evidence and statement of case, in the Tribunal's view that prejudice does not outweigh the prejudice caused to the Applicant and the Tribunal and other users of the Tribunal service if the hearing was to be adjourned. Further the Respondent's conduct in this matter is such that by failing to file any statement of case or evidence to date and then at the last minute making an application to adjourn the hearing, it is effectively seeking to hold the Tribunal to ransom.

28. Whilst having said that the issue of the debarring order is a matter for separate consideration, it seems that it is also a factor to be considered at this stage. If the debarring is set aside, but permission to file a statement of case and evidence is refused, then the Respondent can engage in the hearing today, and test the Applicant's case. It should have the opportunity to test the Applicant's evidence and make submissions on

the evidence that is in the bundle, which contains most if not all of the documents provided by the Respondent under its disclosure obligation. That goes someway to address any prejudice that it would face in a proportionate manner. Mr Gurvits when presented with this as a potential option, said that he did not have time to prepare for the hearing, however, the Tribunal considered that given an hour and a half he should be able to re-familiarise himself with the witness statement of the Applicant and her skeleton argument and then for the hearing to be completed within the day.

Conclusion on application

29. The Tribunal will not adjourn the hearing to another day, but will lift the debarring order. A short adjournment was offered to Mr Gurvits, who stated he could not attend the remainder of the application.

Application

30. The Property is a maisonettes consisting of the upper two floors of 213 Priory Road. There are some general challenges made to the service charges and then individual items are challenged for the years in question. The Tribunal will first deal with the general challenges and then move onto the individual issues.

Auditors

31. The Applicant's lease is dated 7th December 1988, for a term of 99 years from 29th September 1988 ('the Lease'). The Maintenance Charge is dealt with in the Sixth Schedule, it provides as follows:

"1. The Maintenance Charge payable by the Tenant shall be the yearly sum in respect of each year ending on 25th March equal

(a) the costs to the Landlord of complying with his covenants in paragraphs 2, 3, 4 and 5 of the Fourth Schedule …

2. The Maintenance Charge shall be paid: -

(a) By payments on account of the sum conclusively estimated by the Landlord as being the likely Maintenance Charge for the year in question by two equal payments on 25th March and the 29th September in that year

(b) The balance if any within seven days of the service on the Tenant of the certificate of the Landlords auditors as to the total referred to in paragraph 1 of this schedule in respect of the preceding year of the Term …

3. The Landlords certificate as to the amount due to the Landlord shall be conclusive …

32. The Lease provides definitions for the Landlord, Tenant and the Surveyor, the latter being '*a chartered surveyor (not a member or employee of the Landlord or the Landlord's managing agents for the time being) appointed by the Landlord …'*

33. The first general challenge was that the reconciliation charge made by the Respondent under paragraph 2 (b), had not been drafted by the Landlord's auditors, but by their managing agents. It is said that the

reconciliation charge is not supported by a certificate of the Landlords auditors.

34. Each year the Respondent, through its managing agents, Eagerstates Ltd, sends out in one communication ('the Demand'):

    a. an 'accurate service charge account for the preceding year' which shows the actual expenditure for that year; and

    b. acknowledgement of sums received by the Tenant;

    c. the balance left on account;

    d. an 'Estimated Service charge account' for the forthcoming year';

    e. the amount payable by the Tenant;

    f. the balance payable.

35. At the end of those details is the phrase 'Certified by Eagerstates Ltd.' Which is then stamped with their name and address and a signature.

36. The reconciliation therefore does appear to be certified by Eagerstates Ltd, who are the Respondent's managing agents. The difficulty with the Applicant's argument is that the Lease does not define who the auditors should be. Whilst it provides for the rubric of who the Surveyor should be, the uncapitalised reference to 'auditor' is not so prescribed. In that context, the Tribunal is satisfied that the managing agents in reviewing the documentation and providing the account fall within the definition of auditor and therefore the certification requirements have been met.

37. Another challenge was raised on the basis that the accounts did not conform to the ICAEW standard. That is a counsel of perfection, rather than a requirement of this Lease and therefore does not present a basis for challenging the sums claimed.

Accounting Period

38. The next challenge is to the accounting period. It is said that the statements are made up to 1st March, rather than 25th March in each year.

39. The Demands referred to above varying in the time of year in which they are issued. The first is dated 2nd March 2020 and sets out the actual expenditure for 'March 2019/2020'. The second is 1st March 2021 for the year 'March 2020/2021', the third is dated 7th March 2022 for the period 'March 2021/2022', the fourth is dated 6th March 2023 for the period 'March 2022/2023'. The final demand is dated 31st August 2023, but that seeks a sum for the service charge for the period September 2023 to March 2024.

40. Save for the last, the other demands have all been made a few weeks shy of the end of the accounting period to which they refer. Notwithstanding that discrepancy, there is no suggestion that the actual sums demanded were not incurred in the year in question (save for those identified below). Accordingly, whilst the date on which the Demands does not chime with the accounting period, the sums claimed do fall within the relevant period and so that is not reason for discounting the Demands.

Interim ad-hoc demands

41. In addition to the Demands referred to above:

    a. A demand was levied on 26th October 2021 for £1,652. This was for the Applicant's share of the estimated roof work costs plus management fee of £504;

    b. A further demand was levied on 3rd May 2023 for £991.20. This followed a s.20 consultation process and a statement of estimates served on 27th March 2023. The amount claimed was the Applicant's half share contribution to £1,680 being the estimated costs for roof repair works plus management fee of £302.40.

42. The mechanism for service charge demands outlined above does not permit such ad-hoc demands. It permits one estimate per year, payment of that sum to be paid equally on 25th March and 29th September in each year. These demands were outside that regime and are therefore not payable. In any event, the sums, if spent would form part of the reconciliation.

Individual Years

2020/2021

43. Insurance: £882 premium, £50 broker fee. The premium is £882, which is allowed. An additional cost of £548.77 has been made. But this was the previous years premium. Given it should have been charged in the

previous year, and has been allowed for that year, it is not allowed in this year.

44. For each of the years in question, £50 has been added for brokers fees. This is in fact the managing agents fees for placing the insurance. There is no provision for brokers fees in the Lease, let alone for the managing agents to make such a surplus charge.

45. Window and Gutter Cleaning: £252 and £108. The Applicant challenges this on a number of grounds:

    a. The obligation to clean windows is that of the Applicant not the Respondent;

    b. Due to a dispute between the Respondent and the occupier of the ground floor maisonette, no access can be obtained to the windows at the rear and they are not cleaned. So the windows are simply four at the front;

    c. The contractors used to travel from north London to Hastings to carry out the work, charging £84 per trip;

    d. There is a small single gutter at the front which needs clearing; and

    e. A local firm has offered to do the work for £132 once a year.

46. The Tribunal does not agree that cleaning of windows falls to the Applicant, not the Respondent, so as to remove this as a cost item covered by the service charge. Paragraph 4 of the Fourth Schedule to the

Lease provides for the Landlord to keep the outside of the windows of the Building regularly cleaned.

47. However, the Tribunal agrees that the sums are excessive for the other reasons given by the Applicant: i.e. only a few windows, one gutter, excessive travel for contractors and the comparable quote. It considers that windows should be cleaned twice a year, but that the works can be sensibly done together and so allows £260 for both these headings.

48. Surveyors for insurance purposes: £930. This was for a physical inspection and report for rebuilding costs to submit to the insurers. The invoice is dated 23rd March 2020 from JMC Chartered Surveyors & Property Consultants who are based in Manchester.

49. The Applicant had obtained a quote for an online desktop survey for £99 plus VAT and considered that the sum demanded was therefore too high. This was not however a quote for a physical inspection, which the Tribunal consider the Respondent is able to obtain from time to time. The sum claimed is large for a modest maisonette and involved surveyors travelling from Manchester, which must have increased the cost of the assessment. In the Tribunal's view a figure of £450 is reasonable and that sum is payable.

50. Surveyors to prepare PPM £558. There is an invoice for this sum dated 27th April 2020 for carrying out a survey and preparing a Planned Preventative Maintenance strategy ('PPM') Schedule. It is also by JMC. In carrying out a PPM and an insurance reinstatement cost assessment, the Respondent should have (and maybe did) co-ordinate the surveyor to

do both in one trip from Manchester. No copy of the PPM has been produced in disclosure. Neither does it appear to have been relied on given the issues dealt with below over water ingress, brickwork and roofing problems. The Tribunal is left with the impression that whatever was produced was of limited if any value. The estimated sums for this year include a figure of £1,000 for the repair fund (if needed), which suggests that no report was relied on to arrive at any estimated costs for future works. In light of those points, the Tribunal does not consider that this sum was reasonably incurred, or that in fact the report provided was of a reasonable standard. Therefore no sum is allowed.

51. In any event, it was also over the s.20 threshold and there was no consultation prior to the cost being incurred and demanded; so even if a sum was payable, at the very best only £250 would have been recoverable.

52. Fire Health & Safety Risk Assessment : £252 In a previous determination by the Tribunal (CHI/21UD/LSC/2019/0099) Mr Banfield FRICS determined that for the budget for the year end March 2020, £300 was reasonable for a fire safety report but stated *'given the limited responsibilities of the respondent and the issues referred to in the report I would not expect such expenditure to be incurred in future years.'* In fact, the sum incurred for that year, which has not been challenged is £240. The Applicant challenged the sum for this year on the basis of that determination.

53. The previous determination queried the sum in relation to such a small property and given the limited obligations on the Respondent (there being no internal common parts). It also considered that no future costs should be incurred. This Tribunal follows and agrees with that sentiment and disallows this sum for this year.

54. Management fee £576 In principle, the level of management fee charged for this type of property is reasonable. The only basis on which to lower the fee is if the actual service provided has fallen below the required standard so that it can be said to not to have been provided to a reasonable standard. The issues highlighted in reviewing this years actual expenditure show that that standard has fallen below what is reasonable. Not only have unnecessary costs been incurred and charged, but it appears that managing agents have failed to consider the previous Tribunal determination. The instruction of contractors who are not proximate to the property has increased the cost of the services provided. For those reasons the sum is reduced to £350.

2021/2022

55. Insurance: The sum claimed for premium in this year is £,1072.04, plus £50 for broker fee. The latter is not allowed. The former is allowed. The Applicant was concerned that the premiums were exponentially rising and were concerned about hidden commissions being paid. The Tribunal did not consider that the increase warranted any such reduction. Insurance premiums have risen in general terms and there was no reason to consider that this was not the case here. Further, whilst

the Applicant had obtained an alternative quotation in the sum of £886.09 and whilst this was on the basis of a higher sum insured cost than that put forward by the Respondent, the Tribunal does not consider that this justifies a reduction in the sum payable. Firstly the sums are not so significantly difference to suggest that the sum has not been reasonably incurred. Secondly, there were no details of the policy terms for the alternative quote. The Tribunal was not therefore able to say with any confidence that it was comparing like with like.

56. Window, Gutter Cleaning and Fascia Board Investigation: £84, £108, £378, £144. The fees for this year were much higher due to a failure to access the gutter on one arrival. It is not clear why this occurred, but there seems no good reason why the work could not have been carried out. As for the fascia this was inspected by the same company on the same day as the gutter was cleared, the report says 'couldn't see anything wrong'. It is not clear why this was necessary or why £144 was incurred for this. For the reasons set out in the previous year, the sum of £260 is allowed for all these headings in this year.

57. Fire Health & Safety Risk Assessment : £252. For the reasons set out above, this sum is not allowed.

58. Firewall repairs as per s.20. £2,950. This sum comprises £2,500 for works carried out by MSM Management and £450 fees for Eagerstates. The invoice from M2M Management is dated 14th December 2021 for work carried out on 15th November 2021 and is for 'Scaffolding to be put up for access Cap firewalls rear firewalls in torch on bitumen felt repair

or replace any necessary lead work replace any broken slates extend down pipe to meet gutter on lower roof.'

59. Problems with the roof were identified by the Applicant in March 2021 when there was a leak into her rear bedroom and in July 2021 of further issues with the main roof. She instructed her own contractor who thought that the issue might be with the firewalls on the main roof which was causing a leak to the bedroom. She informed the Respondent of this, who said they would take this into account with the works.

60. On 25th June 2021, the Respondent served a notice of intention under s.20 of the Landlord and Tenant Act 1985, in respect of proposed works:

    a. Repair any loose, broken or missing slates.

    b. Fill any holes or cracks in the render on the fire walls with sand and cement and paint with a water proof roofing paint; and

    c. Install a 2-storey tower scaffold.

61. The Applicant responded stating she was getting her own quotes and asking for quotes for remedying the leaks from the main roof, which these did not address.

62. On 13th August 2021, the Respondent sent out notice of estimates. They were: A J Addy, £1,450; AJ Vincent Roofing, £1,100; and BML £1,092. The first two were from contractors that the Applicant had approached and they had provided quotes on an agreed specification. The last one, BML, which undercut the next lowest quote by £8, was for a lesser specification and had been sourced by the Respondent.

63. The Applicant pointed out that this quote did not cover all the works that were required and which the Respondent had previously agreed to carry out and include. Eventually after a fair amount of chasing, the Respondent provided a revised quote on 15th September from BML to carry out works to the main roof as well for a total cost of £2,437.55.

64. On 26th October 2021, Eagerstates sent an invoice for the Applicant's share of £3,304, being for roof works. It was said that this was '*further to the statement of estimates sent on the 13th August 2021 and subsequent correspondence.*' However, the works were now to be carried out by M2M.

65. On 11th November 2021, the Applicant reported in an email to Eagerstates that '*A worker has actually turned up … The person who has turned up is just one person with a ladder, a bucket and a bag of sand.'* When the Applicant queried what work was actually being carried out, on 12th November, Eagerstates replied that '*I spoke to the contractor who has completed the works according to the specification you requested, they changed this after your email of yesterday.'*

66. When some of the work was carried out in November 2021, it was incomplete and despite the Applicant chasing, it was not completed. Further the work that had been carried out was defective to the extent that it was undermined in February 2023 and there was further water ingress. The torch on bitumen felt had been blown off.

67. Whilst there was a s.20 process, the Respondent failed to adhere to the correct procedure, not least in that the works that were carried out, were

different to the works that had been consulted on and were different to the estimates had been provided and most significantly a different contractor was engaged to carry out the works.

68. Only a small amount of the correspondence has been recited above, but it demonstrates the repeated efforts that the Applicant took to get the work done correctly and the failure of the Respondent to properly engage.

69. The Tribunal considers that not only was the work not properly consulted on (with the result that the maximum that can be claimed from the Applicant is £250), but that the standard of work was so poor so as to be of no benefit. Accordingly nothing is payable for this work. That includes the sums charged by Eagerstates for administering the works given that the correspondence and work shows a failure by them to properly deal with matters.

70. Management fee £580.80. Given the difficulties highlighted above, the managing agents have fallen well below a reasonable standard of service in this service charge year and their fee is reduced to £200.

2022/2023

71. Insurance: The total sum claimed this year is £1,283.04. As with the previous year, the broker fee of £50 is not allowed, but the premium is permitted.

72. Window and Gutter Cleaning*:* £144 and £342. For the same reasons as the previous years, £260 is allowed in total for these items.

73. Installation of edge protection guard rails / fencing . £500. The Tribunal was shown pictures of the edge protection guard rail. That description is generous. It is difficult to see how it would provide any protection. The Tribunal could see no need for its installation, nor how it could possible said to protect or guard, this sum is not allowed.

74. Repair to front of building where water is coming in £354. This was a sum for some pointing work after the Applicant had raised an issue with water penetration. The invoice suggests this was carried out on 3rd February 2023. On 17th February 2023 the Respondent sent out a notice of intention in relation to repointing works. From that it seems that the earlier works were unnecessary and provided no benefit to the maintenance of the property. The Respondent did not carry out any assessment of what was needed when they sent contractors in on 3rd February to carry out the works, which ultimately were of no use. For those reasons the sum is not allowed; it was neither reasonable to incur that sum, nor was the work provided to a reasonable standard.

75. Surveyor to prepare insurance reinstatement costs assessment £465. Having already obtained a physical valuation report for insurance purposes, only a desktop assessment was required at this stage. Given that that is a relatively easy task and in light of the alternative quote obtained by the Applicant, the Tribunal considers that £465 is excessive and a sum should not have exceeded £200, so that latter sum is allowed.

76. Management Fee £588. For the reasons highlighted above, particularly the failure to properly deal with the brick work and water penetration,

the Tribunal does not consider that the managing agents provided a service that was to a reasonable standard and so the sum allowable is reduced to £200.

2023/2024 (estimate)

77. Insurance and brokers fee: £1297.19 and £50. For the reasons set out above, £50 is disallowed, the premium is recoverable.

78. Window and Gutter Cleaning*:* £200 and £350. For the reasons set out above, £260 is allowed in total for these items.

79. Fire Health & Safety Risk Assessment : £250. For the reasons set out above, this sum is not allowed. It is unnecessary.

80. Drains Service £200, as an estimated amount, this sum appears reasonable for surveying and remedying any issue with drains.

81. Management fee £592.80. This is an estimated amount, notwithstanding the reservations the Tribunal has about the level of service provided by the managing agent, as an estimate it is reasonable.

Conclusion

82. Appended to this determination is a schedule setting out the sums demanded for each year and the sums either agreed, not challenged or where challenged determined as payable.

83. The Applicant sought an order under s.20C of the Landlord and Tenant Act 1985 and Paragraph 5 of the Commonhold and Leasehold Reform Act, preventing the Respondent from recovering the costs of this

application through either the service charge or as an administration charge. The Applicant has been largely successful and has been more than justified in bringing these proceedings and so an order is made under both provisions so that no sum is recoverable by the Respondent for these proceedings either through the service charge or by way of an administration charge. For the same reasons the Tribunal orders that the Respondent do reimburse the Applicant the hearing and application fee in the sum of £300 within 14 days of receipt of this decision.

JUDGE DOVAR

Appeals

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 .

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.

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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.