FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2021/0392**
Property	**:**	**85, 87A and 87B, Waterford Road, London, SW6 2ET**
Applicants	**:**	**Alex Bayliss & Samantha Whitlam (Flat 85)** **Benjamin Martin (Flat 87A)** **Charles Stevens (Flat 87B)**
Representative	**:**	**Alex Bayliss (in person)**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**No appearance**
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	**:**	**Judge Robert Latham** **Steve Wheeler MCIEH, CEnvH**
Date and Venue of Hearing	**:**	**13 March 2024 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**21 March 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal disallows the following sums totalling £12,685.65 which the Respondent is now obliged to repay to the Applicants:

(i) Insurance: £7,036.89;

(ii) Cleaning of Common Parts: £572.90;

(iii) Window Cleaning: £1,597.20;

(iv) Accountant: £210;

(v) Fire Health & Safety Risk Assessment: £350;

(vi) Shave Down Uneven Slabs: £456;

(vii) Back Door Plastic Ledge: £348. The Tribunal finds that the maximum charge payable by each tenant towards these works is capped at £250;

(viii) H&S Testing Service: £1,001.46;

(ix) FHS Works: £480;

(x) Management Fees: £237.20;

(xi) Handover Fee: £360;

(xii) Emergency Line: £36.

(2) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. By an application dated 28 October 2021, the Applicant tenants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable for the service charge years 2019, 2020 and 2021.

2. The application relates to Flats 85, 87A and 87B, Waterford Road, London, SW6 2ET ("the Building"). 85-87 Waterford Road was a

commercial building which was converted in 2016 to create three flats each of which has two bedrooms:

(i) Flat 85 is on the ground floor and lower ground floor. It is substantially larger than the other flats and pays 47.19% of the service charges relating to the maintenance of the Building. It has its own entrance. It therefore does not contribute towards the costs of maintaining the internal common parts. On 4 October 2019, Mr Alex Bayliss and Ms Samantha Whitlam acquired the leasehold interest. They had occupied the flat, as tenants, for some months before this. They still occupy the flat.

(ii) Flat 87A is on the first floor. The internal common parts include the hallway and a staircase. This flat contributes 50% towards the service charges in respect of the internal common parts and 26.03% towards the costs of maintaining the Building. On 5 September 2016, Mr Benjamin Martin acquired the leasehold interest. Mr Martin spends a significant amount of time in Australia, during which periods he lets out the flat on short leases.

(iii) Flat 87B is on the second floor. It has a roof terrace/balcony above Flat 87A. There has been a history of leaks which have been difficult to resolve. The flat contributes 50% towards the service charges in respect of the internal common parts and 26.78% towards the costs of maintaining the Building. On 14 October 2016, Mr Charles Stevens acquired the leasehold interest. Mr Stevens rents out his flat.

3. In about February 2017, Assethold Limited, the Respondent, acquired the freehold interest in the building. The Respondent appointed Eagerstates Limited ("Eagerstates") to manage the property. There is a close relationship between the two companies. Mr Ronni Gurvits has represented the Respondent in these proceedings.

4. The Applicants became dissatisfied with the manner in which the Building was being managed. They complain of the cost and the quality of the services. On 4 September 2020, they served their Claim Notice to acquire the freehold. They state that the Respondent sought to frustrate their application. On 28 October 2021, they acquired the freehold for £55,000 through 85/87 Waterford Road Freehold Limited. The purpose of this application is to determine their service charge liability for the three years prior to their enfranchisement, namely 1 January 2019 to 27 October 2021. They are concerned that the Respondent has taken their enfranchisement application as an opportunity to increase their service charges. They issued this application shortly before the enfranchisement was completed.

5. This application has had an unfortunate history. The Tribunal has given Directions on a number of occasions, including the following dates: 1 December 2021, 12 January 2022, 27 September 2022, 5 December 2022, 6 July 2023, 6 October 2023 and 16 November 2023.

6. The parties have prepared a Scott Schedule which sets out the issues that the Tribunal is required to determine:

(i) On 15 February 2022, the Applicants served their Scott Schedule. They have prepared a Bundle of Documents (173 pages) upon which they seek to rely, references to which will be prefixed by "T.__".

(ii) On 27 November 2023, the Respondent served their response to the Scott Schedule. The Respondent provided a Bundle of Documents (174 pages) upon which it seeks to rely, references to which will be prefixed by "L.__". It is not paginated and electronic numbering is used. The Respondent did not provide an index. The responses in the Scott Schedule purport to refer to documents in the bundle. It is difficult to find these. Indeed, it is apparent that a number of these documents have not been included.

7. The Respondent's response to the Scott Schedule was only served pursuant to an order made by Judge Martynski on 4 October 2023, debarring the Respondent from defending the application. Strictly, it was served one day out of time. Because of this, the Applicants did not exercise their right to file a Response.

8. Neither party has filed any witness statements. However, the application form, which is attested by a statement of truth signed by Mr Bayliss, sets out in full the details of the service charges which are challenged and is reproduced in the Scott Schedule. The Service Charge Accounts for 2019 and 2020 are at T.104 and T.105. The final Service Charge Statement for the period 25 December 2020 to 21 October 2021 are at T.106.

The Hearing

9. Mr Bayliss represented the Applicants. He is an investment manager who works for Cairngorm Capital. He was accompanied by Ms Whitlam. However, she was not feeling well and left at an early stage. Neither Mr Martin nor Mr Stevens attended. This put the Applicants at a disadvantage. A significant complaint concerns the quality of the services that had been provided. Their complaints also related to the internal common parts which were not enjoyed by Mr Bayliss. They had not made witness statements. There was therefore limited evidence to prove their cases as to the unsatisfactory quality of the services.

10. There was no appearance on behalf of the Respondent. Having regard to rules 3 and 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules), we were satisfied that it was in the interests of justice to proceed. The Tribunal was satisfied that Mr Gurvits had made an informed decision not to attend.

We also had regard to the substantial delays that have occurred in this matter.

11. We notified Mr Bayliss of our provisional view that we should proceed. He urged us to do so. He was anxious to secure closure given the delays that have occurred.

The Decision to Proceed

12. The Tribunal has referred to the unfortunate history of this application. This is largely due to the approach adopted by the Respondent. In their application, the Applicants specified info@eagerstates.co.uk as the Respondent's email address. On 20 January 2022, Mr Gurvits complained that the proceedings had not been served on the Respondent. On 23 March 2022 (at T.51), Mr Bayliss pointed out that this was a purely technical point as Mr Gurvits was involved with both companies. Indeed, he has continued to represent the Respondent in these proceedings.

13. On 3 May 2022, the Respondent sought to argue that the Tribunal had no jurisdiction to determine this application as the Applicants had agreed all outstanding service charges when the acquisition of the freehold was completed. On 27 September 2022 (at T.54), Mrs Bowers determined this as a preliminary issue and concluded that the tribunal did have jurisdiction. She noted that the Respondent had failed to make any written submissions in support of their contention, despite directions that they should do so. On 5 October 2022, the Respondent challenged this decision. The Tribunal sought to establish whether the Respondent was applying for permission to appeal. In the absence of any clarification, Mrs Bowers decided that the appropriate course was to treat the Respondent's correspondence as an application for permission to appeal. On 27 February 2023, she refused permission to appeal.

14. On 27 September 2022 (at T.54), Mrs Bowers had directed the Respondent to file its response to the Scott Schedule by 31 October 2022. It failed to do so. On 6 July 2023, Mrs Bowers directed the Respondent to file its response by 21 August 2023. It failed to do so. On 21 July 2023, the Tribunal set the matter down for hearing on 26 October 2023. The Respondent complained that they had not received the papers. On 6 October 2023 (at T.63), Judge Martynski noted that the Respondent now accepted that it had received the papers and amended the Directions (at T.64-67). He directed the Respondent to file its response to the Scott Schedule by 10 November 2023, in default of which it would be debarred from defending the application. On 9 November 2023, the Respondent sought an extension of time, stating that they had archived all their papers and that they had been unable to retrieve them. On 16 November 2023 (at T.69), Judge Martynski

granted a 10 day extension. On 27 November 2023, the Respondent served its response to the Scott Schedule.

15. On 3 January 2024 (at T.71), the Tribunal notified the parties that it was setting the matter down for hearing on 8 February. On 4 February, Mr Bayliss notified the Tribunal that he would not be available on 8 February. The Tribunal agreed to vacate the hearing.

16. On 24 January 2024, the Tribunal wrote to the parties requesting them to "provide their dates to (sic) for March, April and May 2024" so the case could be relisted. On 30 January, Mr Gurvits provided his dates. Unfortunately, the Tribunal's email had omitted the word "avoid". There was therefore ambiguity as to whether the dates were when a party was available or unavailable. On 1 February, the Tribunal notified the parties that the hearing had been fixed for 13 March. The Case Officer had assumed that this was a date when Mr Gurvits would be available. This Tribunal accepts that Mr Gurvits had rather intended to specify this as a date when he would not be available.

17. On 5 February 2024, Mr Gurvits applied to break the fixture. He merely stated: "we already have a hearing on that date MM/LON/00AU/OCE/2023/0137". This application was considered by Judge Hawkes. On 12 February (at T.72), the Tribunal notified the Respondent that the application had been refused. The letter stated: "The grounds for the application are that the Respondent has another hearing on the relevant date. Accordingly, the Respondent is directed to, by 4 pm on 16 February 2024, write to the Tribunal, copying the correspondence to the Applicants, explaining why different representatives cannot cover each hearing."

18. On 16 February 2024, Mr Gurvits responded: "Thank you for your email. The same person has been dealing with these matters and cannot be in two places at once! Please note the hearing was pushed off at the request of the Applicants and we not asked for further dates to avoid". The Respondent did not seek to address why alternative representation could not be arranged.

19. On 28 February 2024, Judge Martynski reviewed the case and affirmed the decision that the case should proceed. He informed the parties that he had declined to adjourn case: "I have looked at the other case which Mr Gurvits says he is involved with on 13th March. That case relates to a property in Petherton Road, N5. It is listed over the 2-day enfranchisement hearing period, 12 & 13th March. First, as far as I can see from the file on the Petherton Road case, there is nothing actually in issue. Terms and transfer have been agreed. Second, even if there were something to deal with in that case, that can be dealt with on 12th March, leaving the 13th free. Accordingly, the hearing on 13th March 2024 at 10:00am in this case remains effective."

20. Mr Gurvits was not willing to accept this decision. On 1 March, he wrote to the Tribunal and stated: "That is not relevant. We have to make ourselves available for those dates, as directed by the Tribunal. It is not right of the Tribunal to book us in for 2 hearings on the same day. This hearing was moved at the request of the Applicants, the same must be done for the Respondent". On 6 March, he sent a further letter stating: "This is absolutely unacceptable. It has been made clear to the Tribunal that there contracts were exchanged prior to the completion date, that has not been denied by the Applicants, who also agree that completion took place on the 28th October 2021. They state they have not contracted out of their rights to challenge the service charges. By the Tribunals own decision on 27 September 2022, the contract would oust the Tribunal's jurisdiction if it had been entered into prior to the 28th October 2021. The Tribunal is bending over backwards to try and assist the leaseholders, when clearly there is no jurisdiction for the Tribunal. The parties contracted out of the right to challenge the sums further and that is clear from all the documents provided and the documents in front of the Tribunal. The Applicant has provided no legal reasoning as to why the Tribunal does have jurisdiction. There has been a clear contract between the parties and the Tribunal has decided to interfere in this contract."

21. On 8 March 2024, Mr Gurvits asked for an "update". The Tribunal responded that the case would proceed on 13 March. On 11 March, Mr Gurvits sent a further letter: "Good morning, I understand that but you have ignored the fact that we cannot attend due to another hearing or how unreasonable this is. We didn't make a fuss when the Applicant had to cancel the hearing previously, for which they didn't even make a formal order. We would expect the same level of professionalism to both parties!"

22. On 12 March 2024, this email was reviewed by Judge Powell. At 11.21, the Tribunal responded: "Dear Mr Gurvits, Thank you for your email of 11 March 2024. This has been seen by Judge Powell, who has asked me to reply as follows. This case dates from 28 October 2021. The hearing has been postponed on several occasions. The current hearing was notified to the parties on 1 February 2024. The Respondent's complaint is that they are involved in two Tribunal hearings on the same date and they have sought to postpone the hearing of this matter once again. However, the position was investigated by Judge Martynski, who wrote to the parties on 28 February 2024, as follows: 'I have looked at the other case which Mr Gurvits says he is involved with on 13th March. That case relates to a property in Petherton Road, N5. It is listed over the 2-day enfranchisement hearing period, 12 & 13th March. First, as far as I can see from the file on the Petherton Road case, there is nothing actually in issue. Terms and transfer have been agreed. Second, even if there were something to deal with in that case, that can be dealt with on 12th March, leaving the 13th free. Accordingly, the hearing on 13th March 2024 at 10:00am in this case remains effective'."

23. On 12 March at 11.37, Mr Gurvits responded: 11.37: R responds: "Yes, except the Tribunal clearly knew there was a potential conflict and ignored it. This is completely prejudicial but thank you for noting this clearly and we will use this as the basis for any appeal. We are shocked at the conduct of the Applicants who we allowed to change the date (and the Tribunal changed the date without any formal application) regardless of the inconvenience but they have not agreed the same. This goes to show their conduct and will form the basis of any appeal too. We have been completely prejudiced by both the Applicant and the Tribunal and are shocked at this conduct. At 13.47, Mr Gurvits sent a further email: "In addition we have the below hearing tomorrow - CAM/12UD/LSC/2023/0022 and CAM/12UD/LAC/2023/0003".

24. On 12 March at 16.48, the Tribunal responded: "Thank you for your emails this afternoon. Judge Powell has asked me to reply to say that you have not mentioned the Cambridge (CAM) hearings before. In any event, these appear to relate to a case management hearing, where you have already indicated that you do not intend to attend. The hearing in London will proceed tomorrow, 13 March."

25. The Tribunal has set out this correspondence at length, as we delayed the start of the hearing by 1.5 hours to consider whether we should proceed in the absence of Mr Gurvits. We were satisfied that it was in the interests of justice to do so:

(i) There have been unacceptable delays in progressing this case to a hearing. This largely reflects the conduct of the Respondent.

(ii) We accept that it is unfortunate that the Tribunal fixed the hearing on a date on which Mr Gurvits had stated that he would not be available. However, this was due to a misunderstanding as to whether the dates provided were dates to avoid or dates when the Respondent was available.

(iii) A number of Procedural Judges have considered whether the case should proceed in these circumstances. They have concluded that it should.

(iv) The Respondent has failed to explain why it could not arrange for alternative representation. Mr Gurvits has not made any witness statement. There was therefore no need for him to attend.

(v) We are further satisfied that the Respondent knew that the enfranchisement case listed for 12 and 13 March would be completed on 12 March. Further, although he had a Case Management Hearing on 13 March in Cambridge, he had instructed Counsel to attend. Indeed, we have confirmed that Counsel provided a Skeleton Argument for this hearing, dated 11 March.

(vi) Thus, Mr Gurvits could have attended the hearing. He has taken an informed decision not to do so. Further, the Respondent could have arranged for alternative representation. It has a large portfolio of properties. It regularly appears before our tribunals. Dealing with a case fairly and justly, also includes dealing with cases in a proportionate manner and seeking to avoid unnecessary delays.

(vii) We are satisfied that it is in the interests of justice that we should have regard to the responses made by the Respondent to the Scott Schedule, albeit that it would seem that these were filed one day out of time.

The Law

26. Section 18 of the Landlord and Tenant Act 1985 ("the Act") defines the concepts of "service charge" and "relevant costs":

> "(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
>
> (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
>
> (b) the whole or part of which varies or may vary according to the relevant costs."
>
> (2) The relevant costs are the costs or estimate costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with matters for which the service charge is payable."

27. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
>
> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
>
> and the amount payable shall be limited accordingly."

28. Section 20 of the Act requires a landlord to consult in respect of any "qualifying works" where the relevant contribution of any lessee will exceed £250. Where the landlord fails to consult, the tenant's contribution will be capped at £250.

The Leases

29. The Tribunal has been provided with a copy of the lease for Flat 85 (at T.142). The lease is dated 14 October 2016, and was granted by Waterford Road Limited. We highlight the following terms:

(i) "The Building" is defined as "85-87 Waterford Road London SW6 ET registered at the Land Registry with title number LN98386".

(ii) The Tenant's covenants are in Clauses 3 and 4. The Fourth Schedule sets out the "Regulations" which the Tenant is obliged to observe. By paragraph 18, the tenant is obliged to clean all windows internally and externally of the Demised Premises at least once a month.

(iii) The Landlord's covenants are in Clause 5. These include the normal obligation to maintain and keep in good and substantial repair and condition the main structure and exterior of the Building and the common parts. The Landlord also covenants to (a) insure the Building and the common parts (5.6.3); (b) keep clean, lighted and furnished the common parts (5.6.4); and (c) maintain fire extinguishers and ensure the safety of the building (5.6.9 and 5.6.11).

(iv) The Fifth Schedule sets out the Service Charge provisions. The service charge year is the calendar year. Interim service charges are payable on 1 January and 24 June. At the end of any accounting period, the total expenditure for the year, and any shortfall or surplus, is to be certified by the landlord, managing agents or his accountant.

The Tribunal's Determination

30. The Tribunal makes the following determinations in respect of the issues raised in the Scott Schedule (at L.1-13). We deal with the most significant items first.

Issue 1: Insurance

Insurance		
2019	**2020**	**2021**
(£1,564.11)	£5,930.00 Additional Premium: £1,309.73 Surveyor: £1,500	£6,265.16

31. The Applicants take no exception to the insurance charge for 2019. They rather complain of the sharp increase in 2020. Eagerstates changed the insurance from Axa to Arch. The Arch Policy Schedule is at T.124. We note that the cover is for the period 1 March 2020 to 28 February 2021. Mr Bayliss stated that Eagerstates shared with him the terms for the Arch policy. In August 2021 the global insurance broker Willis obtained a bespoke quote for him on identical terms, with a quote (including IPT) of £3,880.18 from Plum Underwriting Limited, an agent for Zurich Insurance Plc. This is at T.110-114. Mr Bayliss stated that the Building is now insured at an annual cost of £1,300. Mr Bayliss accepted that the terms were less favourable than those offered by Arch.

32. The Respondent states that the increase was due to the sum insured increasing. It asserts that the alternative quote only insures Flat 85 and not Flats 87A and 87B. It suggests that it is a home insurance policy and not a commercial policy that covers the freeholder/leaseholder. There are also higher excesses.

33. The Tribunal noted that the Axa policy (at L.17) only insured the Building for £540,750 with a building sum insured of £811,125. This significantly underinsured the Building. The Arch policy values the Building at £2,100,000 with a building sum insured of £2,730,000.

34. The Tribunal is satisfied that the Plum policy is comparable and that it insures the whole building. There is a reference to six bedrooms and uses the same value for the Building. There are some differences to the excesses, but we do not consider these to be significant. The Respondent has provided no evidence of the steps that it took to test the market or any explanation for the additional premium.

35. The Tribunal accepts that the Respondent needed to obtain a valuation report and consider the fee of £1,500 to be reasonable, albeit at the top of the range. The Respondent has not provided a copy of the report. However, the invoice for the report seems to be at L.129.

36. The Tribunal is satisfied that the sums charged for 2020 and 2021 are excessive and cap these at £3,880 per annum. The 2021 accounts include a policy that would have run from 1 March 2021 to 28 February 2022. The benefit of this policy was not transferred to the Applicants when the enfranchisement was completed on 28 October 2021. The Respondent should therefore have cancelled the policy. There is no suggestion that any cancellation fee was payable.

37. The Tribunal therefore allows £3,880 for 2020 and 66.7% of this (£2,588) for the period 1 March to 28 October 2021. They are therefore entitled to a refund of £7,036.89.

Issue 2: Roof and other Repairs

Item 6: Roof Repairs		
2019	**2020**	**2021**
Roof Works £1,350 Balcony Roof Covering £5,699.40	Roof Repair £522	Roof Works £7,150.80

38. Throughout the tenancy, the Applicants complain that there were problems of water penetration. There seem to have been two causes: (i) The balcony/roof terrace above Flat 87A which is enjoyed by Flat 87B; and (ii) the flat roof above Flat 87B. The Applicants complain that the works were executed to a poor standard, resulting in continued leaks. They do not believe that Eagerstates inspected the works. Rather, each time there was a leak, they just instructed more substandard work (for example resulting in a flat roof with no proper drainage, just leading to more leaks). Further, Eagerstates did not properly pursue a claim for the cost of this work under the Buildzone Guarantee which should have covered the cost of this type of rectification work. They suggest that they were double charged for the roof works costing £7,125.80.

39. The Respondents response is that it consulted the Applicants on the works under section 20 of the Act. There was a Buildzone claim and the Applicants were kept updated throughout. The Respondent does not include any consultation letters in its Bundle.

40. The Tribunal has identified the following documents: (i) an invoice, dated 3 January 2019 in the sum of £1,050 for unspecified works (at L.67); (ii) an Invoice from Eagerstates, dated 11January 2029, for "admin fee for section 20 for roof works" (at L.68) (iii) an invoice, dated 11 April 2019, in the sum of £4,830 for "Balcony Roof Covering" (at L.77); (iv) an Invoice from Eagerstates, dated 24 April 2019, for "admin fee for section 20 for roof works" (at L.77) (v) a Notice of Intention, dated 13 November 2019 relating to flashing works to the flat roof (at T.164); (vi) an invoice dated 21 November 2019, from JMC Surveyors in respect of an investigation of the water penetration into the first floor flat (at L.9); (vii) an invoice dated 30 January 2020 in the sum of £522 for unspecified works (at L.132); (viii) a Notice of Intention, dated 19 February 2020 relating to "roof works" (at T.166-168); (ix) A Notice of Estimates, dated 3 April 2020, the lowest estimate being from LMQ Roofing in the sum of £6,060 (inc VAT). The total cost with a 15% management fee would be £7,150.80 (at T.136-8); and (x) An invoice sent to Mr Bayliss and Ms Whitlam, dated 11 May 2020, for their share of this bill (at T.118).

41. The evidence is far from satisfactory. The Respondent has not produced any report from a surveyor assessing the state of the roof. Neither have the Applicants adduced any evidence that the work was executed negligently. Mr Bayliss stated that the Applicant obtained a report from a surveyor since they acquired the freehold. He also conceded that they had had to instruct builders on at least two occasions to address the dampness.

42. We are satisfied that there have been longstanding problems with the roof finishes. The Respondent engaged builders to address these. There is no sufficient evidence that the work was executed negligently. Neither has there been any double charging. For some reason, the works totalling £7,150.80 appeared in the 2021, rather than the 2020 account. The Tribunal makes no reduction in respect of these sums.

Issue 3: Cleaning of Common Parts

Item 2: Cleaning of Common Parts		
2019	**2020**	**2021**
£1,252.24	£1,140.24	£1,501.10

43. The Applicants contend that these sums are excessive for the works required to clean the common parts. These are very limited, namely the entrance hall and one flight of stairs. Neither Mr Martin or Mr Stevens have seen cleaners from Doves Contract Cleaning. They state that they have cleaned the common parts themselves. This takes no more than 15 minutes. They suggest that £3 would be appropriate remuneration.

44. The Respondent has provided a schedule of when Doves Contract Cleaning attended (at L.15-16). This also suggests that they took photos to confirm the visits. This purports to include visits between 5 November 2021 and 11 February 2022, These dates are all after the enfranchisement. It is difficult to understand how they could have taken photos during this period as they had no access to the Building.

45. The Respondent has also provided a number of invoices for 2019 (at L.46-57, L.105) and 2020 (at L.106-116). They attend fortnightly and charge £92.82 per month, namely £38.67 per visit, excluding VAT. No invoices are provided for 2021.

46. The landlord covenants to clean the common parts. Fortnightly visits are reasonable, as is the weekly charge of £38.67. The Applicants have adduced no sufficient evidence to reject the Respondent's case that they have attended regularly. The Tribunal accepts that the cleaning required is modest. Now that they have acquired the freehold, the tenants may well arrange for one of their cleaners to include the common parts at a modest additional cost. This is one of the advantages of the enfranchisement. However, prior to the enfranchisement, the

landlord was obliged to clean the common parts and the fortnightly charges for 2019 and 2020 were not unreasonable.

47. However, the Respondent has provided no explanation as to why the charge should have increased to £1,501.10 for 2021, when the service would only have been provided for 10 months. No invoices have been provided. We are only willing to allow £928.20 for 2021 (10 months at £92.82 per month). The Applicants are therefore entitled to a refund of £572.90.

Issue 4: Window Cleaning

Item 3: Quarterly Window Cleaning		
2019	**2020**	**2021**
£435.60	£580.80	£580.80

48. The Applicants contend that they are required to clean the windows. The Respondent is not entitled to charge them for this service. The Respondent contends that it has an obligation to maintain all external; areas. Further, the tenants did not clean the windows.

49. The Tribunal disallows these sums which total £1,597.20. The leases impose the obligation on the tenants to clean the windows. The Respondent has adduced no sufficient evidence that they failed to do so. There is no evidence of written complaints by the landlord.

Issue 4: Fire Alarms

Item 4: Quarterly Testing of Fire Alarms		
2019	**2020**	**2021**
£162	£216	-

50. The Applicants accept that the landlord is obliged to keep the Building safe. However, they dispute that Doves Contract Cleaning have carried out these quarterly tests. The Respondent states that this service has been provided and this is confirmed by a number of invoices for 2019 (at L.64-66) and 2020 (at L.126-12). The Applicants have adduced no evidence to rebut the inference from the invoices that this service was provided. We therefore allow these charges.

Issue 5: Accountant

Item 5: Accountant		
2019	**2020**	**2021**
£270	£300	-

51. The Applicants accept that the lease permits the landlord to have the service charge accounts certified by an accountant. However, they contend that the price charged by Eagerstates' accountant, Martin Heller, to pull together a single page listing the service charges for the year is excessive. They suggest that it should take no more than an hour of work and that a reasonable hourly rate for a junior accountant should be at most £50. The Respondent contends that the charge is reasonable.

52. The accounts certified by Martin Heller for 2019 are at T.104 and for 2020 at T.105. This is no more than a single sheet of paper replicating the service charge accounts provided by Eagerstates. We are satisfied that the fees are excessive and would allow £150 + VAT. The Applicants are therefore entitled to a refund of £210.

Issue 6: 2020 Accounts – H&S Risk Assessment: £350

53. The Applicants complain about this charge of £350 for a Fire Health and Safety Risk Assessment. The invoice, dated 26 July 2020, is at L.139. In 2019, they had been charged £294 for such an assessment (at L.84). The Respondent replies that the charge is reasonable.

54. The Tribunal is satisfied that an annual assessment is not required for this Building. The Tribunal disallows this sum of £350.

Issue 7: 2020 Accounts - Surveyor: £558

55. On 13 July 2020, JMC Chartered Surveyors charged £558 (£465 + VAT) for carrying out an inspection of the Building and subsequently preparing a PPM Schedule (at L.138). The Applicants contend that it was unreasonable for the Respondent to commission a PPM report given that they were seeking to acquire the freehold. They also suggest that the cost of the report is excessive. The Respondent responds that the cost of the report is reasonable.

56. The Tribunal notes that the Claim Notice to exercise the statutory right to enfranchise is dated 4 September 2020. The Applicants have adduced no evidence that they alerted the Respondent to the proposed enfranchisement before this date. The Tribunal is therefore satisfied that it was appropriate for the Respondent to obtain a PPM report. The Respondent has not provided a copy of the report or the PPM Schedule. However, despite the unsatisfactory nature of the evidence, the Tribunal is satisfied that this charge is reasonable.

Issue 8: 2020 Accounts - Shave down uneven slabs: £456

57. The Respondent has charged the Applicants £456 “to shave down uneven slabs”. The Applicants contend that the relevant paving slabs

were not part of the Building. The area of this work is illustrated in the photographs at L.167.

58. On 24 August 2020 (at T.129-132), the London Borough of Hammersmith and Fulham served a statutory notice on the Respondent requiring it to carry out these works. The invoice for the works, dated 9 September 2020, is at L.166. The Respondent asserts that it was obliged to carry out the works.

59. The Tribunal is satisfied that this part of the paving does not form part of the Building. The lease defines "the Building" as "85-87 Waterford Road London SW6 ET registered at the Land Registry with title number LN98386". We were shown the Land Registry Official Copy of Register of Title. This does not include the pavement area outside the Building. We therefore disallow this sum.

Issue 9: 2020 Accounts - Back Door Plastic Ledge: £1,098

60. The 2020 accounts include £1,098 for "Back Door Plastic Ledge". The Respondent has provided an invoice for £798 from MM Building Agency, dated 11 June 2020, for this work (at L.135), together with an invoice from Eagerstates, dated 1 July 2020, for an "admin fee for section 20 for fitting ledge". The photos at pL.137 seem to illustrate the work that was done.

61. The Applicants state that they had no prior awareness of these works. They still do not understand what work was done or why this was required. They further contend that the Respondent failed to consult them on these works. They state that the whole sum should be refunded.

62. The Respondent replies that the cost of the work was reasonable and relies upon the invoice. It further asserts that a consultation was conducted.

63. The Respondent has failed to provide any Notice of Intention or Notice of Estimates. The Tribunal is satisfied that this work was carried out. However, the Tribunal is not satisfied that the Respondent consulted on these works. The Tribunal therefore caps the liability of each tenant at £250, and the Applicants are entitled to a refund of £348.

Issue 10: 2021 Accounts - H&S Testing Service: £1,001.46

64. The 2021 Closing Accounts (at T.106) include £1,001.46 for "FHS Testing and Service". The Applicants dispute their liability to pay this sum. They state that they are completely unaware of this service. The Respondent's response is "same as previous". This seems to refer to the standard response "This is a reasonable cost as per the invoice".

65. The Respondent has failed to provide any invoice for this service. The Tribunal therefore disallows this charge. The Applicants are entitled to a refund of £1,001.46.

Issue 11: 2021 Accounts - Fire Alarm Works: £1,347.89

66. The 2021 Closing Accounts include £1,347.89 for "Fire Alarm Installation". The Applicants assert that they were invoiced for this work on 6 November 2020 (at T.116) and that they have been charged twice. The Respondent disputes this.

67. The Tribunal accepts that the Applicants were billed for this on 6 November 2020. However, for some reason, this was not included in the 2020 accounts (at T.105). It has therefore only been included in one set of service charge accounts and the Applicants have been credited for the sums that they have paid. We therefore allow this sum.

Issue 12: 2021 Accounts - FHS: £480

68. The 2021 Closing Accounts £480 for "FHS Works". The Applicants state that they do not know to what this charge relates. They are not aware of any works carried out for this value. They do not understand why it was included in the Closing Accounts. It had not been included in the annual estimate of expenses. The Respondent replies: "Please refer to the invoice".

69. The Tribunal cannot find this invoice in the Respondent's Bundle. We therefore disallow it.

Issue 13: 2021 Accounts - Management Fee: £970.20

70. The 2021 Closing Accounts include a management fee of £970.20. In 2020, the management fee had been £867.60 and 2019 it had been £860.40. In 2021, the service was only provided for 10 months.

71. The Applicants contend that this charge is excessive. The Respondent responds that the fee is reasonable.

72. The Respondent has not provided a copy of the management agreement between it and Eagerstates. It has not sought to justify the increase. We would permit a modest increase to £880 for 2021, and allow £733 for 10 months. The Applicants are entitled to a refund of £237.20.

Issue 14: 2021 Accounts - Handover Fee: £360

73. The 2021 Closing Accounts include a handover fee of £360. The Applicants dispute that this sum is payable pursuant to the terms of

their lease. The Applicants state that they do not know the work to which this relates. At no stage have Eagerstates confirmed any details in relation to the handover of the Building. Rather, they sought to obstruct the acquisition of the freehold. The Respondent replies that the charge was reasonable and was agreed in the final completion statement.

74. The Tribunal disallows this sum. There is no evidence that it was agreed by the Applicants. Whilst the Applicants paid the sums demanded in the completion statement in order to complete the enfranchisement, there is no evidence that they thereby admitted that the sum was payable or reasonable.

Issue 15: 2021 Accounts - Emergency Line: £36

75. The 2021 Closing Accounts include £36 for "emergency line". The Applicants contend that this service had not appeared in the Service Charge Accounts for the previous years. They have no idea of the service to which this relates. They assert that the sum seems to be "spurious and unreasonable".

76. The Respondent replies that this was previously it was part of the management fee, but as the management fee was being amended due to the short year, a separate charge was made for this.

77. The Tribunal disallows this charge. The Tribunal has already found that Eagerstates charged an inflated fee for the final 10 months that they managed the Building. The Applicants were not informed of this service. There is no justification for making a separate charge for this, when no such charge had previously been made.

Issue 16: Legal Costs: £20,407.74

78. The Applicants complain that the Respondent was unduly obstructive in the enfranchisement process. On 4 September 2020, the Applicants served their Claim Notice. The enfranchisement was not completed until 28 October 2021. They assert that the enfranchisement should have been completed by 31 December 2020, and claim a refund of the service charges paid in 2021. The Tribunal is satisfied that this is not a ground for reducing the service charges.

Issue 17: Replacement Locks: £845.60.

79. The Applicants complain that Eagerstates did not account for the keys to the Building when the freehold was acquired. They therefore felt it necessary to change the locks at a cost of £845.60. This is not a service charge item within our jurisdiction.

Refund of Tribunal Fees

80. At the end of the hearing, Mr Bayliss applied for a refund of the tribunal fees of £300 which the Applicants have paid. We have disallowed a number of the service charge items. We are satisfied that the Respondent should refund the tribunal fees of £300 which the Appplciants have paid within 28 days.

Judge Robert Latham
21 March 2024

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).