



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

**Case reference** : **LON/00BH/LSC/2022/0286**

**Property** : **Flats 1, 2, 3 & 4, 779 High Road,  
Leytonstone, London, E11 4QS**

**Applicant** : **Binton Estates UK Limited**

**Representative** : **Mr Simon Stern, Fountayne  
Management Limited**

**Respondent** : **Kashif Hussain**

**Representative** : **In person**

**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 Bernadette MacQueen  
Mr Kevin Ridgeway, MRICS**

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

**Date of hearing** : **11 March 2024**

**Date of decision** : **2 April 2024**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £3, 521.29 is payable by the Respondent in respect of the service charges for the years 2018, 2019, 2020, 2021 and 2022. The details of this are set out in the schedule in this Decision (below). The total amount includes the sum of £66.58 that the Respondent agreed was payable for bank charges and £3,454.71 that the Tribunal determined was payable.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 Commonhold and Leasehold Reform Act 2020 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (4) No application was made by the Applicant that the Respondent reimbursed the Tribunal fees.

## **The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charges payable by the Respondent in respect of Flats 1, 2, 3 and 4, 779 High Road, Leytonstone, London, E11 4QS. The Applicant made separate applications for each flat as they were held under separate leases, however the Tribunal joined these applications so that they were heard together.
2. The service charge years in dispute were 2018, 2019, 2020, 2021 and 2022. The service charge year ran from 1 January until 31 December in any given year.
3. The Tribunal made directions on 11 October 2022, amended on 2 May 2023, for the disclosure of relevant service charge accounts and estimates for the years in dispute, together with all demands for payment and detail of payments made. The Directions also provided for a Scott Schedule to be completed and an indexed bundle of documents provided for the hearing.
4. A bundle consisting of 546 pages was before the Tribunal. This included witness statements from both parties, insurance schedules, certificates and invoices.

5. 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.

### **The hearing**

6. The Applicant was represented by Mr S Stern at the hearing and the Respondent appeared in person.

### **The background**

7. 777-779 High Road, Leytonstone, London, E11 4QS consisted of a commercial unit on the ground floor, five flats on the ground floor, with entrance from the main road, and on the first floor, five residential flats known as Flats 1, 2, 3, 4 & 5, 779 High Road, Leytonstone, London, E11 4QS. These flats were accessed via a separate entrance to the commercial unit. At pages 544 to 546 of the bundle was a floor plan showing the total floor area in square feet. The size of each individual flat was shown at pages 545 and 546.
8. Flat 5 was not included within this application because the service charges relating to that flat had been settled by the leaseholder's mortgage company. The application therefore related to Flats 1, 2, 3, 4 & 5, 779 High Road, Leytonstone, London, E11 4QS (the Property).
9. The Applicant was the freehold owner of 777-779 High Road, Leytonstone, London, E11 4QS. Fountayne Management Ltd were the managing agents for the Property.
10. The Respondent held five separate long leases for the Property. The leases were all dated 24 December 2005 and were identical in terms. The leases required the freeholder to provide services and the leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

### **The Issues**

11. At the start of the hearing the parties identified the relevant issues for determination as the payability and/or reasonableness of service charges for 2018, 2019, 2020, 2021 and 2022. The Respondent, in his statements to the Tribunal, also raised the issues of whether there was a qualifying long-term agreement and whether consultation was completed and whether items were not payable as they were demanded out of time.

12. A Scott Schedule was provided by the parties (pages 167 – 215 of the bundle) and the Tribunal invited the parties to make representations on the items within the Scott Schedule so the Tribunal could determine matters that were agreed, matters that were still in dispute and any revised figures.

**Matters Agreed Between the Parties**

13. The items in the Scott Schedule (pages 167-215 of the bundle) that the Applicant no longer wished to pursue in relation to Flats 1, 2, 3, & 4 were:
- a. Community electricity for years 2018, 2019, 2020, 2021
  - b. Management fee for years 2018, 2019, 2020
  - c. Communal Cleaning for year 2021
  - d. Fire Prevention System Service for year 2021
  - e. General Maintenance for year 2021
  - f. General Maintenance (full block) for year 2021
  - g. Gutter and Roof Maintenance for years 2021, 2022

14. The Respondent agreed that bank charges were payable as follows:

**Service Charge Year Ended 2021:**

<b>Item</b>	<b>Flat Number</b>	<b>Cost</b>
Bank Charges	Flat 1	£8.42
Bank Charges	Flat 2	£7.61
Bank Charges	Flat 3	£8.63
Bank Charges	Flat 4	£8.63
	<b>Total</b>	<b>£33,29</b>

**Service Charge Year Ended 2022:**

<b>Item</b>	<b>Flat Number</b>	<b>Cost</b>
Bank Charges	Flat 1	£8.42
Bank Charges	Flat 2	£7.61
Bank Charges	Flat 3	£8.63
Bank Charges	Flat 4	£8.63
	<b>Total</b>	<b>£33,29</b>

### **Matters in Dispute:**

15. At the hearing, the Scott Schedule was reviewed, and the matters and grounds that were disputed were revised. The following items remain in dispute:
- a. Insurance (years 2018, 2019, 2020, 2021 and 2020)
  - b. Accounts (years 2021 and 2022)
  - c. Management Fees (years 2021 and 2022)
  - d. Out of Hours Service (years 2021 and 2022)
  - e. Fire Prevention System Service (year 2022)
  - f. General Maintenance (year 2022).

### **Amendment of Totals to Use Actual Amounts**

16. At the hearing, the Applicant explained that since the application had been made, the accounts for 2021 and 2022 had been reconciled. This meant that a credit had been applied to the account where necessary. The amounts outstanding had therefore changed because of this, as well as the partial payments made. The Applicant therefore suggested that the Tribunal use these actual expenditure amounts. The Respondent agreed to this. Therefore the Tribunal considered this application using revised expenditure amounts as provided by the Applicant.

### **Qualifying Long Term Agreement/Consultation**

17. The Respondent stated (specifically at paragraphs 7 and 15 of his witness statement, page 461 of the bundle), that in 2018, the Applicant failed to notify him that the management of the Property had been handed over to Block Management Ltd and then Fountayne Management Limited. The Respondent asserted that the Applicant

therefore failed consult with him before entering into this long-term agreement and further this was necessary as the change in management company resulted in an increase in the service charge of £100 per annum per flat he had previously verbally agreed with the Applicant (section 20 ZA Landlord and Tenant Act 1985).

18. The Applicant confirmed at paragraph 30 of their statement (page 229 of the bundle) that they were not aware of any letter that the Respondent claimed he requested regarding the need for consultation on insurance costs or a reduced management fee.
19. The Tribunal found that there was no obligation to consult. The Respondent held five separate leases, and the charges applied to all the flats did not exceed £250.00 or the Qualifying Long Term Agreement consultation requirements.

### **Limitation Period – Section 20B**

20. At paragraph 16 of the Respondent's witness statement (page 468 of the bundle), the Respondent stated that he was not aware that the Landlord and the previous management company (Block Management Limited) had provided demands for the fees that they were claiming for the period 2018 and 2019. Accordingly, the Respondent stated that the alleged fees had been incurred more than 18 months before the demand and the fees were therefore not payable.
21. The Applicant stated at paragraph 40 of their witness statement that the accounts for the period 2018-2019 were served in 2020, and the service charges were raised on the budget previously. The Applicant stated that they were entitled to recover the amount in full and that they had tried to work with the Respondent to reach agreement, and this was the reason the accounts were finalised in 2020. The 18 month rule should therefore not be applied.
22. The Tribunal found that the limitation period (section 20B) was not applicable. This was a case where the Respondent was paying what he thought was owing rather than the Applicant failing to make timely demands. There had been protracted discussions between the parties to agree the service charge amounts, which had ultimately led to the matter being brought before this Tribunal. The Applicant had properly raised the service charge demand and it was not caught by any limitation period.
23. The question for this Tribunal was therefore the reasonableness of the service charges that were disputed between the parties. The Tribunal considered each of these matters in turn:

### **Insurance – Parties' Positions:**

24. The parties' positions were set out in the Scott Schedule below. Additionally, the parties expanded on their respective positions in their witness statements and at the hearing.
25. In compliance with the Directions issued by this Tribunal, the Applicant provided insurance policies for 2018, 2019 and 2020 (pages 404-416 of the bundle). The Applicant confirmed in their witness statement (para 21 page 226 of the bundle) that the freeholder was required to insure the building. At paragraph 35 of their witness statement (page 231 of the bundle) the mechanism used for the insurance was confirmed as there being three separate insurance schedules for 777-779 High Road. The first schedule related to the internal areas for 777 High Road (the Respondent was therefore not required to contribute to that). The second schedule was for services to the internal areas that belonged to 779 High Road, (again, the Respondent was not required to contribute towards that). The third schedule was for the external elements of the roof, building structure and insurance aspects of the service charges as explained in the Scott Schedule. It was this third schedule that all leaseholders contributed to, including the Respondent. The Leaseholders contributed based on the square footage of each flat. This meant that the Applicant had the information to make the determination as to the correct apportionment and this was not something a leaseholder could do. In any event, the Applicant did not accept the Respondent's apportionment as being 20.30% for all five of his flats. The Applicant maintained that the apportionment was set out in the lease and that was the calculation that should be followed.
26. At page 461 of the bundle the Respondent explained that in 2014, 777-779 High Road consisted of the five flats owned by the Respondent and a vacant commercial unit. The Respondent stated that in 2014 he had a verbal agreement with Mr David Blenth (a director of Binton Estates UK Limited, the Applicant), that he would pay 50% of the insurance premium. Further, the Respondent stated that in 2018 he had informed the Applicant that he would be contributing 25% of the reasonable insurance premium because the fact this was a commercial premises forced a higher insurance risk and because there were now more flats in the building.
27. Additionally, the Respondent stated that he had told the Applicant that he should be given quotes for the insurance to consider before it was accepted. The Respondent stated that he had not been provided with quotes or policy documents and therefore he was not able to calculate the apportionment for the Property or see how percentages had been allocated to the other flats and commercial unit.
28. At the hearing, the Respondent stated that he believed that the Applicant should have two insurance policies - one commercial and

one residential as in effect he was paying a higher premium because the building included a commercial unit.

29. The parties' positions were set out in the Scott Schedule:



**Service Charge Year 2018 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Insurance	£1,947.80.	<p>Claimed share :</p> <p>Flat 1 £395.40 – 20.30%.</p> <p>Flat 2 £356.84 – 20.30%</p> <p>Flat 3 £404.95 – 20.79%</p> <p>Flat 4 £404.95 – 20.79%</p> <p>Already paid £486.95 for 5 flats. Paid on 02/10/2018</p>	<p>The Leaseholders share is calculated using the square footage within the property. We believe that the Leaseholders share is as follows:</p> <p>Flat 1 - 20.30%</p> <p>Flat 2 – 18.32%</p> <p>Flat 3- 20.79%</p> <p>Flat 4 – 20.79%</p> <p>We agree that there has been a payment for £486.95 received historically as a combined payment across flats 1-5 High Road, Leytonstone for the respondent to the previous management company, the amount paid is incorrect and substantially less that what is due.</p> <p>The Leaseholder has calculated his payment based on the total cost of £1,947.80, this is incorrect as the total cost should be split</p>

			<p>between both 777 and 779 High Road, Leytonstone. The figure of £1, 947.80 has been split between both buildings and the cost of £895.99 has been allocated to 779 High Road against flats 1-5. Therefore the amount payable for 2018 is £895.99 and the amount payable based on the share for each flat is:</p> <p>Flat 1 - £181.88</p> <p>Flat 2 – £164.15</p> <p>Flat 3- £186.27</p> <p>Flat 4 - £186.27</p> <p>As explained this would evidence a shortfall in payment, meaning that the following amounts are outstanding following the agreed payment made by the respondent.:</p> <p>Flat 1 £409.05</p> <p>Flat 2 £164.15</p> <p>Flat 3 £ 186.27</p> <p>Flat 4 £186.27</p> <p>We in addition received a payment of £177.41 from the</p>
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			<p>respondent's mortgage company on 24/05/2022 meaning that the following totals are outstanding for all flats for the 2018 period are:</p> <p>Flat 1 £231.64</p> <p>Flat 2 £554.43</p> <p>Flat 3 £532.31</p> <p>Flat 4 £532.31</p> <p>The amount outstanding as states at the hearing:</p> <p>Flat 1 £47.02</p> <p>Flat 2 £101.57</p> <p>Flat 3- £110.67</p> <p>Flat 4 £110.67</p>
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**Service Charge Year 2019 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Insurance	£2,110.10	<p>Claimed share:</p> <p>Flat 1 £428.35 – 20.30%</p> <p>Flat 2 £386.57 – 20.30%</p> <p>Flat 3 £438.69 – 20.79%</p> <p>Flat 4 £438.69 – 20.79%</p> <p>Already paid £527.52 for 5 flats. Paid on 02/11/2021</p>	<p>The Leaseholders share is calculated using the square footage within the property. We believe that the Leaseholders share is as follows:</p> <p>Flat 1 - 20.30%</p> <p>Flat 2 – 18.32%</p> <p>Flat 3- 20.79%</p> <p>Flat 4 – 20.79</p> <p>The Leaseholder has calculated his payment based on the total cost of £2,110.10, this is incorrect as the total cost should be split between both 777 and 779 High Road, Leytonstone. The figure of £2, 110.10 has been split between both buildings and the cost of £970.65 has been allocated to 779 High Road against flats 1-5. Therefore the amount payable for 2019 is £970.65 and the amount payable based on the share for each flat is:</p> <p>Flat 1 - £197.04</p> <p>Flat 2 – £177.82</p>

			<p>Flat 3- £201.80</p> <p>Flat 4 - £201.80</p> <p>This indicates that the full amount of £970.65 is due.</p> <p>We in addition received a payment of £192.19 from the respondent's mortgage company on 24/05/2022 meaning that £778.46 is the total outstanding for all flats for the year 2019</p> <p>The amount outstanding as stated at the hearing:</p> <p>Flat 1 £158.02</p> <p>Flat 2 £142.61</p> <p>Flat 3- £161.84</p> <p>Flat 4 £161.84</p>
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**Service Charge Year 2020 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Insurance	£1,497.46	<p>Claimed share:</p> <p>Flat 1 £303.98 – 20.30%</p> <p>Flat 2 £274.33 – 20.30%</p> <p>Flat 3 £311.32 – 20.79%</p> <p>Flat 4 £311.32 – 20.79%</p> <p>Already paid £374.36 for 5 flats. Paid on 02/11/2021</p>	<p>The Leaseholders share is calculated using the square footage within the property. We believe that the Leaseholders share is as follows:</p> <p>Flat 1 - 20.30%</p> <p>Flat 2 – 18.32%</p> <p>Flat 3- 20.79%</p> <p>Flat 4 – 20.79</p> <p>The Leaseholder has calculated his payment based on the total cost of £1,497.46. This is incorrect as the total cost should be split between both 777 and 779 High Road, Leytonstone. The figure of £1,497.46 has been split between both buildings and the cost of £688.83 has been allocated to 779 High Road against flats 1-5. Therefore the amount payable for 2020 is £688.83 and the amount payable based on the share for each flat is:</p>

			<p>Flat 1 - £139.74</p> <p>Flat 2 – £126.20</p> <p>Flat 3- £143.21.</p> <p>Flat 4 - £143.21</p> <p>This indicates that the full amount of £688.83 is due.</p> <p>We in addition received a payment of £177.41 from the respondent's mortgage company on 24/05/2022 meaning that £511.42 is the total outstanding for all flats for the year 2020</p> <p>The amount outstanding as stated at the hearing:</p> <p>Flat 1 £103.82</p> <p>Flat 2 £93.69</p> <p>Flat 3- £106.32</p> <p>Flat 4 £106.32</p>
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**Service Charge Year 2021 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Insurance Premium	£2,200.00	<p>Claimed share</p> <p>Flat 1 £205.92 – 9.36%</p> <p>Flat 2 £185.90 – 8.45%</p> <p>Flat 3 £210.98 – 9.59%</p> <p>Flat 4 £210.98 – 9.59%</p> <p>To date we do not have the policy schedule despite numerous requests made to Fountayne Ltd. Please see</p>	<p>The amount for the insurance is £1,363.00 – of which the Leaseholders share is 8.45% = £115.17. The change on amount is down to the account being reconciled and this amount being an actual amount.</p> <p>The Lease requires the Freeholder to insure building, these costs are recoverable by way of service charge. The Leaseholder is charged on the 2<sup>nd</sup> schedule and therefore charged a reduced percentage of 8.45%.</p> <p>A copy of the insurance certificate and invoice as directed by the Tribunal was sent on 17/05/2023 via email and we have attached these within the exhibits of the supporting documents within the statement of case.</p> <p><b>Amounts confirmed as outstanding at the hearing:</b></p> <p>Flat 1 - £127.58</p>



		attached emails sent.	Flat 2 - £115.17  Flat 3 - £130.71  Flat 4 - £130.71
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**Service Charge Year 2022 in relation to Flats 1, 2, 3 &4:**

<b>Item</b>	<b>Cost</b>	<b>Tenant's Comments</b>	<b>Landlord's Comments</b>
Insurance Premium	£1,500.00	<p>Claimed share</p> <p>Flat 1 £140.40 – 9.36%</p> <p>Flat 2 £126.75 – 8.45%</p> <p>Flat 3 £143.85 – 9.59%</p> <p>Flat 4 £143.85 –</p>	<p>The amount is £1,500.00 – the Leaseholders share is 8.45% = £26.75. The change on amount is down to the account being reconciled and this amount being an actual amount.</p> <p>The Lease requires the Freeholder to insure building, these costs are recoverable by way of service charge. The Leaseholder is charged on the 2<sup>nd</sup> schedule and therefore charged a reduced percentage 8.45%.</p> <p>A copy of the insurance certificate and invoice as directed by the Tribunal was sent on 17/05/2023 via email and we have attached these within the exhibits of the supporting documents within the statement of case.</p>

		<p>9.59%</p> <p>To date we do not have the policy sched file despite numerous requests made to Fountayne Ltd. Please see attached emails sent.</p>	<p><b>Amounts confirmed as outstanding at the hearing:</b></p> <p>Flat 1 £148.58</p> <p>Flat 2 £134.14</p> <p>Flat 3 £152.23</p> <p>Flat 4 £152.23</p>
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### **Tribunal Findings - Insurance**

30. The Tribunal did not accept the evidence of the Respondent that there was an agreement with the Applicant that required the Respondent to pay 25% of the insurance and a service charge of £100 per flat per annum. The lease was a legally binding document and took precedence over any verbal agreement. The Tribunal therefore determined that the apportionment should take place in accordance with the terms of the lease. The leaseholders' contribution was based on the square footage of each flat (as shown at pages 544 to 546 of the bundle), and this was a calculation that fell to the Applicant to complete.
31. Additionally, the Tribunal did not accept that the Applicant was under any obligation to provide insurance quotes to the Respondent. It was for the landlord to determine the insurance policy it took out. The Tribunal noted that the insurance was divided into three schedules (as set out above) and that the Respondent was liable to contribute to the third schedule only. This adequately took account of the fact that one of the units in the building was a commercial unit. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal made determinations on the insurance amounts payable as follows:

<b>Insurance</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat 1 share</b>	<b>Flat 2 share</b>	<b>Flat 3 share</b>	<b>Flat 4 share</b>
Insurance 2018	£369.93	£47.02	£101.57	£110.67	£110.67
Insurance 2019	£624.31	£158.02	£142.61	£161.84	£161.84
Insurance 2020	£410.15	£103.82	£93.69	£106.32	£106.32
Insurance 2021	£504.17	£127.58	£115.17	£130.71	£130.71
Insurance	£587.18	£148.58	£134.14	£152.23	£152.23

2022					
<b>Total to pay</b>	£2,495.74	£585.02	£587.18	£661.77	£661.77

**Parties' Positions - Accounts (years 2021 and 2022)**

32. The parties set out their position in the Scott Schedule below. Additionally, the Applicant stated at paragraph 25 of their witness statement (page 228 of the bundle) that the lease required the freeholder to independently reconcile and certify the expenditure and that this was to be done by an independent accountant. A copy of the invoice for 2021 was within the bundle.
33. Further, at paragraph 29 of their statement, the Applicant stated that the Respondent was previously the freeholder of 777-779 High Road, Leytonstone. The fact that there were five separate leases drawn up for the flats was something the Respondent agreed to by entering into the leases.
34. The Respondent stated at paragraph 14.1.10 of this witness statement (page 467 of the bundle) that the fee was unreasonable.
35. The parties set out their positions in the Scott Schedule as follows:

**Service Charge Year 2021 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Accounts	£540.00	<p>Claimed Share</p> <p>Flat 1 - £50.40 - 9.36%.</p> <p>Flat 2 - £45.63 - 8.45%</p> <p>Flat 3 £51.79 - 9.59%</p> <p>Flat 4 £51.70 - 9.59%</p> <p>Why have they made 5 separate accounts for the same premises? One</p>	<p>In accordance with the terms of the lease, the freeholder is required to reconcile and certify the service charge accounts by an independent accountant. The cost for the accountant to sign off the accounts is recoverable by way of service charge. No alternative quotations were provided and no disputes were raised.</p> <p>The respondent holds 5x separate leases which each require him to contribute to service charges separately. Whilst the leaseholder queries being charged separately for each flat, this is due to the lease terms and conditions. Each flat holds a separate yet identical lease, therefore all charges remain separate and payable. Each flat is therefore charged in accordance with the terms of the lease – this is no connection between each lease the respondent holds in relation to service charges.</p> <p>This chare is based on a actual amount.</p>

		account could suffice as it is a small dwelling. I also feel that the amount claimed is excessive	At the hearing the following amounts were stated as owing: Flat 1 - £50.54  Flat 2 - 45.63  Flat 3 - £51.79  Flat 4- £51.79
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Service Charge Year 2022 in relation to Flats 1, 2, 3 &4:

<b>Item</b>	<b>Cost</b>	<b>Tenant's Comments</b>	<b>Landlord's Comments</b>
Accounts	£90.00	Claimed Share  Flat 1 - £50.40 - 9.36%.  Flat 2 - £45.63 -	There has been an erroring the tenants comments regarding the amount being charged – the amount is £540.00 of which the leaseholder is liable for 9.36% =£50.54.  The Lease allows the freeholder to take money on account for the accounts. The amount stated has been for a budget amount

		<p>8.45%</p> <p>Flat 3 £51.79 – 9.59%</p> <p>Flat 4 £51.70 – 9.59%</p> <p>Why have they made 5 separate accounts for the same premises? One account could suffice as it is a small dwelling. I also feel that the amount claimed is excessive</p>	<p>within the service charge year.</p> <p>In accordance with the terms of the lease, the freeholder is required to reconcile and certify the service charge accounts by an independent accountant. The cost for the accountant to sign off the accounts is recoverable by way of service charge. No alternative quotations were provided and no disputes were raised.</p> <p>The respondent holds 5x separate leases which each require him to contribute to service charges separately. Whilst the leaseholder queries being charged separately for each flat, this is due to the lease terms and conditions. Each flat holds a separate yet identical lease, therefore all charges remain separate and payable. Each flat is therefore charged in accordance with the terms of the lease – this is no connection between each lease the respondent holds in relation to service charges.</p> <p>At the hearing the following amounts were stated as owing:</p> <p>Flat 1 - £50.54</p> <p>Flat 2 – 45.63</p> <p>Flat 3 - £51.79</p> <p>Flat 4- £51.79</p>
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## **Tribunal Findings - Accounts**

36. The Tribunal accepted the evidence of the Applicant. The lease required the Applicants to have an independent accountant to reconcile and certify the accounts. The Applicant had therefore met their obligations in accordance with the lease.
37. In terms of the reasonableness of the amount charged, the Tribunal did not accept the assertion by the Respondent that there should be one account given that the Respondent had entered into five separate leases.
38. The Tribunal therefore found that the amount claimed by the Applicant was reasonable and the following amounts were to be paid by the Respondent to the Applicant:

<b>Accounts</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat 1 share</b>	<b>Flat 2 share</b>	<b>Flat 3 share</b>	<b>Flat 4 share</b>
2021	£199.75	£50.54	£45.63	£51.79	£51.79
2022	£199.75	£50.54	£45.63	£51.79	£51.79
Total Amount	£399.50	£101.08	£91.26	£103.58	£103.58

## **Parties' Positions - Management fees (years 2021 and 2022)**

39. The parties set out their positions in the Scott Schedule (below). In addition, the Applicant in their witness statement stated that the management fees included the day-to-day management of the Property such as raising demands, credit notes, collecting and processing payments, compiling actual expenditure, dealing with insurers, brokers and processing insurance claims, communicating with residents and the freeholder, chasing ground rent and service charge arrears, conducting property inspections, and coordinating and overseeing maintenance. The lease allowed the charge to be recovered by way of a service charge in accordance with the lease.
40. Further the Applicant stated that between 2018-2020 the maintenance costs were low, but the Applicant was of the opinion that this was because of a minimal service delivered by the previous managing

agent. The Applicant maintained that they were delivering services in accordance with the lease and this was reflected in the higher charge.

41. The Respondent stated at paragraph 14.1.9 of his witness statement (page 467 of the bundle) that the amount claimed was a disproportionate fee for the management of five flats. This was especially true because the Applicant was also charging further fees such as bank charges and accounts under different headings of the service charge schedule. The Respondent therefore asked the Tribunal to find that the fees for a small building were unreasonable.
  
42. In his second statement at paragraph 11 (page 541 of the bundle) the Respondent disputed the management fee invoices and stated that they do not add up correctly.
  
43. At the hearing the Applicant stated that work included tidying up the account and setting the background as well as work to repair a loose carpet in the communal area. The Respondent reiterated his position that he could not understand the work that was being done to justify the fee.
  
44. The parties set out their positions in the Scott Schedule as follows:



**Service Charge Year 2021 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Management Fees	£3,300	<p>Claimed Share</p> <p>Flat 1 £308.88-9.36%.</p> <p>Flat 2 £278.85 - 8.45%</p> <p>Flat 3 - £316.47 9.59%</p> <p>Flat 4 - £316.47 9.59%</p> <p>Disputed amount, previously it was agreed to a £100 per annum per flat, why</p>	<p>In accordance with the terms of the lease the freeholder is entitled to instruct managing agents to carry out its obligations. The fees are recoverable by way of service charge. We have not been provided with any evidence of an agreement between the freeholder and the leaseholder to cap any management fee, considering the size of the property a charge of £308.88 is considered fair and reasonable.</p> <p>We believe the amount payable is £308.88 inclusive of VAT.</p> <p>No alternative quotation has been obtained regard this cost. We believe the fee to be fair and reasonable.</p> <p>Amount claimed at the hearing:</p> <p>Flat 1 £308.88</p>

		is there such a difference in the new invoice, although the required services have not changed?	Flat 2 £279.00 Flat 3 £316.47 Flat 4 £316.47
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Service Charge Year 2022 in relation to Flats 1, 2, 3 &4:

<b>Item</b>	<b>Cost</b>	<b>Tenant's Comments</b>	<b>Landlord's Comments</b>
Management Fee	£3,300	<p>Claimed Share</p> <p>Flat 1 £308.88-9.36%.</p> <p>Flat 2 £278.85 - 8.45%</p> <p>Flat 3 - £316.47 9.59%</p>	<p>In accordance with the terms of the lease the freeholder is entitled to instruct managing agents to carry out its obligations. The fees are recoverable by way of service charge. We have not been provided with any evidence of an agreement between the freeholder and the leaseholder to cap any management fee, considering the size of the property a charge of £308.88 is considered fair and reasonable.</p> <p>We believe the amount payable is £308.88 inclusive of VAT.</p> <p>No alternative quotation has been obtained regard this cost. We</p>

		<p>Flat 4 - £316.47 9.59%</p> <p>Disputed amount, previously it was agreed to a £100 per annum per flat, why is there such a difference in the new invoice, although the required services have not changed?</p>	<p>believe the fee to be fair and reasonable.</p> <p>Amount claimed at the hearing:</p> <p>Flat 1 £308.88</p> <p>Flat 2 £279.00</p> <p>Flat 3 £316.47</p> <p>Flat 4 £316.47</p>
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## **Tribunal Findings – Management Fees**

45. The Tribunal did not accept the evidence of the Respondent that a verbal agreement was in place to limit the management fees to £100 per annum per flat. The terms of the lease allowed the landlord to add management fees as a service charge, and the lease set out the mechanism for apportionment between the flats. Any verbal agreement would not be able to supersede this.
46. The Tribunal did find that the management fees were excessive. The Tribunal noted the Applicant's position and the work that had been carried out, however using its expert knowledge, the Tribunal felt the fee was too high and therefore reduced the amount. The charge payable by the Respondent to the Applicant is as follows:

<b>Management Fee</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat 1 share</b>	<b>Flat 2 share</b>	<b>Flat 3 share</b>	<b>Flat 4 share</b>
2021	£80.20	£20.30	£18.32	£20.79	£20.79
2022	£80.20	£20.30	£18.32	£20.79	£20.79
Total Amount	£160.40	£40.60	£36.64	£41.58	£41.58

## **Parties' Positions - Out of hours service (years 2021 and 2022)**

47. The Parties set out their positions in the Scott Schedule below. In addition, at paragraph 23 of their statement, page 227 of the bundle, the Applicant stated that arrangements for the use of an out of hours call centre was arranged for the times when the office was closed.
48. The Respondent at paragraph 14.1.11 of his witness statement (page 486 of the bundle) stated that the building was small. He had never required the service, and in any event, would be prepared to offer this service to his tenants himself. Additionally, the Respondent stated that the Applicant had not provided an invoice setting out the name of the company and the fees.

49. Following disclosure of the invoice by the Applicant, the Respondent in his reply statement (paragraph 9 of the Respondent's second statement) alleged that the relevant invoice (Waltham Maintenance INV-1009) was still disputed because he doubted the validity of the company, and in any event had not seen any out of hours service provided.
50. Additionally, at the hearing the Respondent told the Tribunal that he and the tenants were not aware of the out of hours service and that this service had never been used. Moreover, when there was a leak in the roof, the Respondent paid for this repair.
51. The Applicant referred the Tribunal to page 390 of the bundle which was a picture of the communal hallway. The Applicant pointed out a notice which was displayed and gave details of the out of hours service.
52. The parties set out their positions in the Scott Schedule as follows:





Service Charge Year 2021 in relation to Flats 1, 2, 3 &4:

Item	Cost	Tenant's Comments	Landlord's Comments
Out of hours service	£385.00	<p>Claimed share</p> <p>Flat 1 -£36.04 - 9.36%</p> <p>Flat 2 - £32.53 - 8.45%</p> <p>Flat 3 - £36.92 - 9.59%</p> <p>Flat 4 - £36.92 - 9.59%</p> <p>Never used nor requested as I provide all of these services myself to my tenants</p>	<p>In order to provide proper management we have instructed an out of hours call centre to deal with any maintenance issues reported. We believe this to be recoverable in accordance with the term of the lease. No challenges or disputes have been raised.</p> <p>This is an actual charge.</p> <p>Amounts Claimed at the hearing:</p> <p>Flat 1 £36.04</p> <p>Flat 2 £32.53</p> <p>Flat 3 £36.92</p> <p>Flat 4 £36.92</p>

Service Charge Year 2022 in relation to Flats 1, 2, 3 &4:

Item	Cost	Tenant's Comments	Landlord's Comments
Out of hours service	£385.00	<p>Claimed share</p> <p>Flat 1 -£36.04 - 9.36%</p> <p>Flat 2 - £32.53 - 8.45%</p> <p>Flat 3 - £36.92 - 9.59%</p> <p>Flat 4 - £36.92 - 9.59%</p> <p>Never used nor requested as I provide all of these services myself to my</p>	<p>In order to provide proper management we have instructed an out of hours call centre to deal with any maintenance issues reported. We believe this to be recoverable in accordance with the term of the lease. No challenges or disputes have been raised.</p> <p>Amounts Claimed at the hearing:</p> <p>Flat 1 £36.04</p> <p>Flat 2 £32.53</p> <p>Flat 3 £36.92</p> <p>Flat 4 £36.92</p>

		tenants	
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## **Tribunal Findings – Out of hours service**

53. The Tribunal was satisfied that the amount charged for the out of hours service was reasonable. Whilst the Respondent had raised concerns about the validity of the invoice produced by the Applicant, the Respondent had not produced any evidence to the Tribunal that the invoice was not properly raised. The Tribunal found that the out of hours service provided by the Respondent was reasonable and had been properly notified to tenants, including by displaying the telephone number in the communal area.
54. The Tribunal therefore found that the following amounts were payable by the Respondent:

<b>Out of Hours Service</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat share 1</b>	<b>Flat share 2</b>	<b>Flat share 3</b>	<b>Flat share 4</b>
2021	£70.28	£17.78	£16.06	£18.22	£18.22
2022	£142.41	£36.04	£32.53	£36.92	£36.92
Total Amount	£212.69	£53.82	£48.59	£55.14	£55.14

## **Parties' Positions - Fire Prevention System service (year 2022)**

55. The parties set out their position in the Scott Schedule below. In addition, the Applicant stated at paragraph 22 of their witness statement (page 226 of the bundle) that the charge included a mandatory fire risk assessment, and inspection of fire alarms and emergency lighting. The Applicant stated that there was no mechanism within the lease for the freeholder to consult the leaseholders and that it was the responsibility of the freeholder to ensure that relevant assessments and certificates were obtained. Further the Applicant stated that the size of the communal area was not relevant to the costs charged for the service.
56. At paragraph 14.1.4 of the Respondent's witness statement (page 465 of the bundle) he stated that the passageway that permitted access to

the Property was very small and the Application has not been shown an invoice for the fees.

57. The parties set out their positions in the Scott Schedule as follows:

**Service Charge Year 2022 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
Fire Prevention System Service	£350	<p>Claimed Share</p> <p>Flat 1 - £71.05 - 20.30%</p> <p>Flat 2 - £64.12 - 18.32%</p> <p>Flat 3 - £72.77 - 20.79%</p> <p>Flat 4 - £72.77 - 20.79%</p> <p>The amount claimed is too high, the commercial corridor is one same passage providing access to all 5 flats. No</p>	<p>The lease allows the freeholder to charge money on account for the fire prevention system service. The amount started as been for a budget amount within the service charge year.</p> <p>The lease requires the freeholder to maintain the communal areas. The freeholder is required to carry out a Fire Risk Assessment, emergency lighting and fire alarm testing which has all been coded under "fire prevention". We have to carry out a Fire Risk Assessment, emergency lighting certificates and fire alarm testing, this is for the safety of all occupants within the building.</p> <p>The amount provided in the bundle are budget amounts. Actual figures have not been received and are provided.</p> <p>The respondent holds 5x separate leases which each require him to contribute to service charges separately. Whilst the Leaseholder queries being charged separately for each flat, this is die to the leas terms and conditions. Each flat holds a separate yet identical lease, therefore all charges remain separate and payable. Each flat is therefore charged in accordance with the</p>

		<p>certificates provided for this service nor invoices. Why and I being charged separately for each flat when the small communal area is the same. Please provide evidence of this work carried out.</p>	<p>terms of the lease – there is no connection between each lease the respondent holds in relation to service charges.</p> <p>The size of the communal area is not relevant to the cost being charged.</p> <p>No alternative quotations were provided.</p> <p>At the hearing the amount claimed was confirmed as :</p> <p>Flat 1 £29.90</p> <p>Flat 2 £26.36</p> <p>Flat 3 £29.92</p> <p>Flat 4 £29.92</p>
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## **Tribunal Findings – Fire Prevention System Service**

58. The Tribunal accepted the evidence of the Applicant. The Applicant, as freeholder was required to provide fire prevention systems and there was no obligation for the Respondent to be consulted. Equally, the size of the communal area was not a relevant consideration as the prevention systems needed to be put in place. Additionally, the Tribunal did not accept the assertion of the Respondent that he should not be charged separately for each flat given that the Respondent had chosen to manage the flats under separate leases.
59. The Tribunal therefore found that the amount charged by the Applicant for the fire prevention safety system was reasonable and determined the following as payable by the Respondent:

<b>Fire Prevention Safety System</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat 1 share</b>	<b>Flat 2 share</b>	<b>Flat 3 share</b>	<b>Flat 4 share</b>
2022	£116.10	£29.90	£26.36	£29.92	£29.92

### **Parties' Positions - General Maintenance (year 2022)**

60. The parties set out their positions in the Scott Schedule below. Additionally, at paragraph 17 of the Applicant's statement, they confirmed that the freeholder was responsible for the common parts. The Applicant further stated that the Respondent had the right to inspect and receive copies of any receipts, accounts and other documents relating to the service charges. However, the charge had not been challenged by the Respondent.
61. At the hearing, the Applicant further explained that work within this general maintenance category for the year 2022 included cleaning the gutters in July 2022.
62. The Respondent at paragraph 14.1.6 of his statement (page 466 of the bundle), stated that he had not been provided with an invoice that told him the details of the company that carried out the work, the work that was completed and the necessity of the work. Additionally, the Respondent stated that he had not seen anyone carrying out maintenance at the Property and had not seen any work completed.
63. The parties set out their positions in the Scott Schedule below:

**Service Charge Year 2022 in relation to Flats 1, 2, 3 &4:**

Item	Cost	Tenant's Comments	Landlord's Comments
General Maintenance	£200.00	<p>Claimed Share</p> <p>Flat 1 £18.72 – 9.36%</p> <p>Flat 2 £16.90 – 8.45%</p> <p>Flat 3 £19.18 – 9.59%</p> <p>Flat 4 £19.18 – 9.59%</p> <p>There was no works carries out in this calendar year. I should have been informed and sent copy of invoices for my section of the building if work was carried out. Please</p>	<p>The lease allows the freeholder to charge money on account for the general maintenance. The amount stated has been for a budget amount within the service charge year.</p> <p>The respondent holds 5x separate leases which each require him to contribute to services charges separately. Whilst the Leaseholder queries being charged separately for each flat, this is due to the lease terms and conditions. Each flat holds a separate yet identical lease, therefore all charges remain separate and payable. Each flat is therefore charged in accordance with the terms of the lease - there is no connection between each lease the respondent holds in relation to service charges.</p> <p>The lease requires the freeholder to maintain the communal areas as part of maintenance.</p> <p>The amount has been based on a budget amount, however the account for High Road Leytonstone has been reconciled. I can confirm that there has been no charge general maintenance.</p>

		state where this work was carried out and when?	The amount provided at the hearing:  Flat 1 £17.78  Flat 2 £16.06  Flat 3 £18.22  Flat 4 - £18.22
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## **Tribunal Findings – General Maintenance**

64. The Tribunal accepted the evidence of the Applicant. The Applicant was responsible for the common parts and was under a duty to maintain these. The Applicant had not provided invoices within the bundle because this was a budgeted amount when the bundle was put together. However, the Applicant had provided actual figures at the hearing and confirmed that the Respondent was able to inspect these invoices. Whilst the Respondent stated that he was not aware of any work being completed, he would not have had sight of the Property on a continual basis. The Tribunal therefore found that the maintenance work as described by the Applicant had been completed and that the cost of this work was reasonable. The amounts payable by the Respondent to the Applicant were as follows:

<b>General Maintenance</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat 1 share</b>	<b>Flat 2 share</b>	<b>Flat 3 share</b>	<b>Flat 4 share</b>
2022	£70.28	£17.78	£16.06	£18.22	£18.22

## **The Tribunal's Decision - Schedule of Findings**

65. Taking all of these findings together, the Tribunal determined that the total amount payable by the Respondent to the Applicant in relation to the service charges for the Property for the years 2018, 2019, 2020, 2021 and 2022 was £3, 521.29. The breakdown of this figure was as follows:

<b>Insurance</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat 1 share</b>	<b>Flat 2 share</b>	<b>Flat 3 share</b>	<b>Flat 4 share</b>
Insurance 2018	£369.93	£47.02	£101.57	£110.67	£110.67
Insurance 2019	£624.31	£158.02	£142.61	£161.84	£161.84
Insurance 2020	£410.15	£103.82	£93.69	£106.32	£106.32

Insurance 2021	£504.17	£127.58	£115.17	£130.71	£130.71
Insurance 2022	£587.18	£148.58	£134.14	£152.23	£152.23
<b>Total to pay</b>	<b>£2,495.74</b>	<b>£585.02</b>	<b>£587.18</b>	<b>£661.77</b>	<b>£661.77</b>

<b>Accounts</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat share 1</b>	<b>Flat share 2</b>	<b>Flat share 3</b>	<b>Flat share 4</b>
2021	£199.75	£50.54	£45.63	£51.79	£51.79
2022	£199.75	£50.54	£45.63	£51.79	£51.79
<b>Total Amount</b>	<b>£399.50</b>	<b>£101.08</b>	<b>£91.26</b>	<b>£103.58</b>	<b>£103.58</b>

<b>Management Fee</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat share 1</b>	<b>Flat share 2</b>	<b>Flat share 3</b>	<b>Flat share 4</b>
2021	£80.20	£20.30	£18.32	£20.79	£20.79
2022	£80.20	£20.30	£18.32	£20.79	£20.79
<b>Total Amount</b>	<b>£160.40</b>	<b>£40.60</b>	<b>£36.64</b>	<b>£41.58</b>	<b>£41.58</b>

<b>Out of Hours Service</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat share 1</b>	<b>Flat share 2</b>	<b>Flat share 3</b>	<b>Flat share 4</b>
2021	£70.28	£17.78	£16.06	£18.22	£18.22

2022	£142.41	£36.04	£32.53	£36.92	£36.92
Total Amount	£212.69	£53.82	£48.59	£55.14	£55.14

<b>Fire Prevention Safety System</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat share 1</b>	<b>Flat share 2</b>	<b>Flat share 3</b>	<b>Flat share 4</b>
2022	£116.10	£29.90	£26.36	£29.92	£29.92

<b>General Maintenance</b>	<b>Amount Awarded by Tribunal (total)</b>	<b>Flat share 1</b>	<b>Flat share 2</b>	<b>Flat share 3</b>	<b>Flat share 4</b>
2022	£70.28	£17.78	£16.06	£18.22	£18.22

Total Amount:

<b>Item</b>	<b>Total Cost</b>
Insurance	£2 495.74
Accounts	£399.50
Management Fee	£160.40
Out of Hours Service	£212.69
Fire Prevention safety System	£116.10
General Maintenance	£70.28

Bank Charges (Agreed by Respondent)	£66.58
<b>Total</b>	<b>£3 521.29</b>

### **Application under s.20C/Paragraph 5A and refund of fees**

66. The Applicant did not make an application for a refund of the fees that he had paid in respect of the application and hearing.
67. The Respondent applied for an order to limit payment of the landlord's costs (under section 20C of the 1985 Act and paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002). Although the Applicant indicated that no costs would be passed through the service charge as the matter of costs would be dealt with at the County Court, for the avoidance of doubt, the Tribunal nonetheless determined that it was just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and paragraph 5A Schedule 11, so that the Applicant may not pass any of their costs incurred in connection with the proceedings before the Tribunal through the service charge.

**Name:** Judge Bernadette MacQueen **Date:** 2 April 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).