FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/LSC/2023/0230**
Property	**:**	**Flat 5, 59 Huntingdon Street, London N1 1BX**
Applicants	**:**	**Warren Hyams, Stephanie Hyams and Natalie Hakim (nee Hyams)**
Representative	**:**	**Warren Hyams in person**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Piers Harrison of Counsel**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Mrs A Flynn MRICS**
Date of hearing	**:**	**29 November 2023**
Date of Decision	**:**	**3 January 2024**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decisions of the tribunal

(1) The Applicants' share of the following service charge items is not payable at all:-

- the £5,154.24 charge for the additional scaffolding and roof works;
- the handover fee of £600.00;
- the extra management fee of £360.

(2) The main roof work charge is reduced from £13,947.60 to £13,245.24 for the purposes of calculating the Applicants' liability, and accordingly the Applicants are only liable to pay their share of the lower figure of £13,245.24.

(3) The management fee is reduced in each year (for the purposes of calculating the Applicants' liability) as follows:-

2016/17 – from £1,644.00 to £1,397.40 (a reduction of 15%)

2017/18 – from £1,644.00 to £1,397.40 (a reduction of 15%)

2018/19 – from £1,692.00 to £1,438.20 (a reduction of 15%)

2019/20 – from £1,706.40 to £1,194.48 (a reduction of 30%)

2020/21 – from £1,720.80 to £1,204.56 (a reduction of 30%)

2021/22 – from £1,742.40 to £1,219.68 (a reduction of 30%).

(4) The other service charge items challenged by the Applicants are payable in full.

(5) The following administration charges are not payable at all:-

- Eagerstates' costs of £120.00 x 3 = £360 in total *(and claimed in letters from Eagerstates dated 14 May 2021, 19 April 2022 and 20 April 2023 respectively)*;
- Administration fee of £360.00 *(referred to in a Statement of Account dated 28 May 2021)*;

- DRA referral fee of £216.00 *(referred to in a Statement of Account dated 28 May 2021)*;

- DRA correspondence fee of £474.00 *(referred to in a Statement of Account dated 28 May 2021)*;

- Administration fee for rent collection of £60.00 *(referred to in a letter from Eagerstates dated 1 March 2023)*.

(6) We hereby make an order in favour of the Applicants under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge. We also make an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under their lease.

Introduction

1. The Applicants seek a service charge determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") and an administration charge determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**").

2. The Property is a one-bedroom flat in a converted house ("**the Building**") containing 6 flats. The Applicants are the leaseholders of the Property and the Respondent is their landlord.

3. The Applicants disputed the payability of the building insurance premiums and the management fee for the years 2016/17 to 2021/22 inclusive plus various other service charges for the 2021/22 year and certain administration charges levied between 14 May 2021 and 20 April 2023.

The parties' written submissions

Building insurance premiums

4. The Applicants state that their lease ("**the Lease**"), a copy of which is in the hearing bundle, requires the landlord to effect building insurance *"on fair and reasonable terms that represent value for money"*.

5. They believe that the amount of insurance premium does not represent value for money. Mr Hyams owns a flat directly opposite the Property, 7B Huntingdon Street, and says that the insurance that the landlord was able to arrange for 7 Huntingdon Street (of which 7B is part) was always significantly cheaper than the insurance for the Property despite

the fact that 7 Huntingdon Street is much larger than 59 Huntingdon Street.

6. Mr Hyams goes on to state that he requested on several occasions that the Respondent contact an insurance broker used by him in order to obtain a more competitive quotation for the building insurance, but the Respondent failed to obtain any quotations from the broker put forward by him and just continued to charge what he considers to be unreasonable amounts for building insurance.

7. In response, the Respondent states that the Applicants assert that the insurance is inflated but have not provide any alternative quotes for the Building. The Respondent adds that the insurance has always been arranged by an external broker who tests the market to ensure the costs charged are reasonable.

Management fee

8. The Applicants state that the managing agents (Eagerstates) have persistently provided a very poor service and mismanaged the Building, as demonstrated in relation to the insurance as well as the views shared online by dissatisfied leaseholders. Mr Hyams states that there can be no doubt that Eagerstates are an unethical property management company, and therefore he considers that the annual management fees charged are not reasonable. The management charge relates to the provision of a service and he believes that when the service falls short of reasonable expectations it is reasonable to expect the management charges to be either reduced or removed.

9. In response, the Respondent objects that the Applicants have not provided any details of the basis on which the management fee is disputed and that they simply state that the fee is not reasonable. The Respondent contends that the charge per annum is reasonable.

Roof works

10. Mr Hyams states that on 16 April 2019 Eagerstates wrote to inform him that they intended to carry out extensive works amounting to a complete replacement of the roof, dormer windows, front and rear mansards and box guttering, as well as repairs to roof lights and zinc capping to the front and rear parapet walls. On 20 May 2019 he wrote to Eagerstates informing them that he did not accept that such major works were required. Although there had been some leaks into the Applicants' flat, in his view these had been caused by damage to the box guttering and Mr Hyams was not aware of any faults in the roof which had caused leaks. He acknowledged that work was required to the box guttering, but no more than that.

11. Mr Hyams suggested that the leaseholders be given the opportunity to arrange for a roofing specialist to assess the roof and independently determine what work was required, and he provided the contact details of a builder that he had used. However, Eagerstates ignored the comments made by him and instead issued an email on 7 June 2019 stating that they had obtained two quotations and had decided to go with LMQ Roofing Contractors who had provided a quote of £26,877.60. On 5 July 2019 Mr Hyams then wrote to Eagerstates to express his disappointment with how the process had been managed and their failure to obtain a quotation from the building contractor that he had put forward.

12. On 2 August 2019 Eagerstates provided Mr Hyams with a copy of the defects report relating to the roof prepared by JM Cope Chartered Surveyors & Property Consultants. He reviewed the defects report and concluded that even according to Eagerstates' own expert report the roof did not need replacing in its entirety and that the defects were limited to the box guttering and repairs required to the dormer windows. He then emailed Eagerstates on 10 September 2019 to express his disappointment with their conduct, which he regarded as fraudulent. On 3 October 2019, Eagerstates issued an email attempting to justify why they had proposed to replace the entire roof and then on 4 December 2019 they issued a revised notice of intention to carry out work in relation to the roof. On 15 January 2020 they then wrote to leaseholders stating that they would be proceeding with LMQ Roofing who had provided a quote of £10,980 to complete the work.

13. The Applicants then had no update from Eagerstates on the roof works for over 15 months, and then suddenly an email arrived on 18 March 2021 to say that a new contractor would be starting work the following day and that they would be £840 more expensive than LMQ Roofing. In his view, the new contractor, BML, could best be described as 'cowboys'. They took off parts of the roof and left the roof exposed when heavy rain was forecast without putting in place adequate protection. This resulted in significant damage to Flat 6 and in water gaping through the light sockets and down the walls in the Applicants' flat causing damage to the cornice.

14. Mr Hyams has also provided copy emails and images of the damage which he says was caused to the Building and states that it was left to the owners of Flats 5 and 6 to protect the Building. In addition, Eagerstates wrote to leaseholders stating that they were incurring additional costs to fix the dormer windows at £4,550 + VAT and there would be additional scaffolding costs of £2,440 + VAT, whereupon the leaseholders took the decision to fix the dormer windows themselves at a cost of £500 and also secured a quote for all of the scaffolding for £1,500 from North Pole Scaffolding Ltd. Emails were issued to Eagerstates showing the work completed and the quote obtained for the scaffolding.

15. Despite what Mr Hyams describes as the inadequate work by Eagerstates' contractor, Eagerstates issued an email on 13 April 2021 claiming that the roof works had cost £16,188 and stating that they wished to impose an additional £2,428.20 of management charges. Mr Hyams sent a further email on 6 May 2021 to Eagerstates to formally dispute their charges for the roof works and informing them that he intended to make an application to the First-tier Property Tribunal for a determination of liability to pay and reasonableness of service charges.

16. In addition to disputing the Respondent's charges, the Applicants also wish to claim from the Respondent the sum of £702.36, this representing the cost of the repair works that they say they needed to have carried out at their own expense to the Property as a direct result of the Respondent's contractor's incompetence. A copy of the relevant invoice is in the hearing bundle, and this was sent to the Respondent together with an explanation prior to the Applicants' application to the tribunal.

17. In the Scott Schedule completed by the Applicants there is reference to "Roof works as per section 20 Notice" at a cost of £13,947.60 and, separately, "Additional Scaffolding & Roof Work as per Section 20 Notice" at a cost of £5,154.24, and it was confirmed at the hearing that these were the sums being challenged in relation to the roof works.

18. In its own written submissions, the Respondent disagrees with the Applicants' comments. The Respondent has provided copy invoices for the works together with what it describes as evidence that the works were completed in full following the consultation. The Respondent accepts that there were issues with the roof works but states that the contractors dealt with these at the time. They also accept that there were further issues following the completion of the works but state that this was due to the works carried out by the leaseholders of Flat 6 when they replaced their windows, as per the copy email chain in the hearing bundle, and that those issues were then dealt with by the Flat 6 leaseholders' contractor.

<u>Various charges for the 2021/22 year</u>

19. This challenge was originally stated to be in respect of the 2020/21 year but the position was clarified at the hearing and it was agreed that this challenge actually relates to the 2021/22 year.

20. The Applicants contend that the following charges appear to be inflated:-

- the common parts electricity charge;
- the common parts cleaning charge;

- charges for fire health and safety testing, service and repairs;
- charges for a fire health and safety risk assessment;
- accountant's fee.

21. The Applicants also contend that the following charges appear to be fictitious:-

- bin cleaning charges;
- 6-month carpet cleaning charge;
- EICR report charge;
- EICR remedial works charge;
- window sealing charges;
- charge for fitting of roof lip above window;
- charge for surveyor to prepare a pre-planned maintenance schedule;
- charge for gutter cleaning and local repair;
- charge for intercom service;
- charge for survey to prepare insurance reinstatement cost assessment.

22. In addition, the Applicants contend that the charge for electrical call-out for cabling after flood is a cost that should have been met by the Respondent or its contractor or claimed on insurance.

23. In response, the Respondent objects that the Applicants have offered no actual analysis in respect of most of the charges being challenged and have not provided any alternative quotations.

Handover fee of £600

24. The Applicants state that there is no justification for this fee. The Respondent states in response that it is not a service charge but a cost to the right-to-manage ("**RTM**") company.

Further management fee of £360

25. The Applicants state that there is no justification for this fee. The Respondent states in response that it was a final charge prior to the handover to the RTM company.

Administration charges

26. Mr Hyams states that he has received threatening correspondence from Eagerstates and from debt collection companies acting on their behalf where additional charges have been imposed for non-payment of service charges, despite his making it very clear to Eagerstates that the relevant service charges were disputed. As the service charges were disputed and as Eagerstates failed to provide the supporting documentation that Mr Hyams repeatedly requested and generally acted in what Mr Hyams regards as an obstructive manner, he sees no basis for all the additional charges that have been imposed.

27. The Respondent states that it is clear from paragraph 7 of Schedule 3 to the Lease that the Applicants are liable for any costs incurred in contemplation of any section 146 notice. More specifically, the £216 referral fee was for liaising with the client in connection with documentation provided and previous correspondence with the Applicants. In relation to the £474 Review & Correspondence charge, all parties were traced for any additional address/contact information, initial correspondence was then sent via post, then Land Registry searches were carried out and there was communication with the Applicants. The administration fees represent the Respondent's costs incurred in dealing with this matter and then also assisting the Debt Recovery Agency. There was a fee of £120 incurred for commencing the initial proceedings stage and a fee of £360 for assistance and initial case review with the Debt Recovery Agency. The Respondent contends that the administration costs in relation to the collection of the rent are payable as service costs as defined under the Lease and that the Lease allows for *"all costs incurred by the landlord in relation to the building, separate to the costs incurred to the provision of the services, to be repaid by the Leaseholder"*.

The hearing

28. Mr Hyams attended the hearing. The Respondent did not attend but was represented by Counsel. The following material points were made at the hearing.

Insurance

29. Mr Hyams said that he had requested details from Eagerstates of any insurance quotations received by the Respondent but that they had

refused to supply these. He contended that the Respondent was obliged to provide this information pursuant to clause 4.3 of the Lease. He had also asked the Respondent to approach his own broker but it had not done so.

30. In cross-examination, it was put to Mr Hyams that there was no tangible evidence before the tribunal as to the basis on which his other property was insured.

Management fee

31. Mr Hyams said that the level of management fee would be fair if Eagerstates had provided a good service but they had not done so, particularly in relation to the insurance and the roof works.

32. In cross-examination it was put to Mr Hyams by Mr Harrison for the Respondent that his analysis was threadbare. Mr Harrison also submitted that the Applicants could not rely on negative online reviews for the Respondent and/or Eagerstates to which they had referred in written submissions.

Roof works and scaffolding costs

33. Specifically regarding the additional scaffolding charges, Mr Hyams referred the tribunal to the Notice of Intention dated 4 December 2019 which included all necessary scaffolding within the scope of the original works and contended that, therefore, the Respondent could not pass on any additional later charges for scaffolding.

34. In cross-examination it was put to Mr Hyams that the Respondent had taken his observations into account by reducing the scope of the works. In response he objected that this was a selective account of what actually happened.

35. There followed a discussion as to whether one of the Applicants' bases for challenging the cost of the roof works was an alleged failure on the part of the Respondent to comply fully with the section 20 statutory consultation requirements.

36. In relation to the additional scaffolding and roof works (£5,154.24), whilst not formally conceding the point Mr Harrison accepted that the Respondent did not have any arguments as to why this sum was payable.

37. Mr Hyams confirmed that in addition to disputing the Respondent's charges, the Applicants also wish to claim from the Respondent the sum of £702.36. This, he stated, represented the cost of the repair

works that the Applicants had needed to carry out to the Property at their own expense as a direct result of the Respondent's contractor's incompetence.

Various other charges for the 2021/22 year

38. As a general point, Mr Hyams argued that the Applicants should not be charged for the period after the date of handover to the RTM company. Mr Harrison did not disagree with this point in principle, but it was not possible to establish at the hearing what the handover date had been. It was therefore agreed that the parties could make brief written post-hearing submissions on this point, and accordingly a letter was sent to the parties after the hearing containing further directions as to the deadline for a response on this point.

39. Regarding the charge for an electrical call-out for cabling and the EICR report charge, Mr Hyams argued that the need for each of these resulted from a leak caused by the Respondent's contractor, but in response Mr Harrison said that the Respondent was not responsible for its contractor's negligence, that these items were both services covered by the Lease and therefore that they were both legitimate service charge items.

40. Regarding the various other charges for this year, Mr Harrison referred the tribunal to the relevant copy invoices in the hearing bundle.

Handover fee and extra management fee

41. Mr Hyams said that nothing was handed over and therefore that there was no basis for charging a handover fee. There was also no invoice. Regarding the extra management fee, Mr Hyams did not see on what basis the Respondent could justify charging this on top of the management fee that had already been charged.

42. Mr Harrison was unable to assist the tribunal as to how the handover fee had been calculated and/or what specifically it related to. Nor was he able to assist the tribunal on the question of what the extra management fee related to.

Administration charges

43. Mr Hyams said that he had clearly disputed the relevant service charges and that he had also requested further information to help him to understand whether the charges were in fact justified. The Respondent's response had been to ignore the requests for further information and to impose charges for late payment.

44. Mr Harrison said that in April 2022 the Applicants' service charge arrears amounted to over £5,000.

Tribunal's analysis

Building insurance premiums

45. The Applicants' challenge to the level of the building insurance premiums is in part based on the proposition that the Respondent was under a legal obligation to provide them with details of any insurance quotations that it had received. On this point they purport to rely on clause 4.3 of the Lease, although it would seem that they actually mean paragraph 4.3 of Schedule 5 which contains a landlord's covenant *"to keep accounts, records and receipts relating to the Service Costs incurred by the Landlord and to permit the Tenant, on giving reasonable notice, to inspect the accounts, records and receipts"*. We do not accept that this covenant can be construed as requiring the landlord to hand over copies of alternative insurance quotations, and nor do we accept that a landlord has any such obligation in the absence of clear wording in the lease requiring it to do so.

46. The Applicants also make a general observation that in their view the insurance premiums are unreasonably high, but their only evidence on this point is the assertion contained in Mr Hyams' witness statement that he pays far less on his other nearby property. This is insufficient evidence to be persuasive on the facts of this case. The Respondent has stated that it uses a broker who regularly tests the market. The Applicants could have contacted an alternative broker or an alternative insurer to obtain a formal alternative quote on a 'like for like' basis but they did not do so, and there is also no evidence before us that they tried to do so.

47. Instead, all that we have from the Applicants is a series of figures for what Mr Hyams has been paying on his other property together with his own personal analysis of the situation. We do not suggest that he is being untruthful in this regard; on the contrary, he came across as very sincere at the hearing. However, he is not an insurance expert and there is insufficient hard information to enable the tribunal to have any confidence that the two properties are comparable. For example, there is no evidence on claims history or on the sum insured or on any exclusions or onerous conditions. And whilst we accept that it is arguable that the level of insurance premium does look slightly on the high side, a simple gut feeling that the premium may be on the high side is insufficient to entitle the tribunal to reduce it.

48. Accordingly, the insurance premiums are payable in full in respect of each year of challenge.

Management fee

49. The Applicants seek to rely on online reviews of Eagerstates' performance as a managing agent, but this is not a proper basis on which to judge whether the management fee is payable in part or in full. First of all, there are questions regarding whether any particular online review can be assumed to be accurate, including (but not limited to) what motivated that particular negative reviewer. Secondly, none of the people who posted the negative reviews are available to be cross-examined on their respective reviews in order to test the reliability of those reviews. And thirdly, even if it could be demonstrated that Eagerstates provided a poor service or poor value for money in relation to a different property with different leaseholders/tenants, this does not demonstrate that it therefore provided a poor service or poor value for money to the Applicants in relation to this property.

50. However, having seen the Applicants' written submissions and supporting documentations and having heard Mr Hyams' oral submissions, we accept – notwithstanding the Respondent's objections – that the level of service on the part of Eagerstates fell below an acceptable standard in various respects. First of all, Eagerstates' handling of the roof works issue was poor at many stages of the process. They were either obstructive and uncommunicative on many occasions, and the impression one gets is of the Applicants' concerns being regarded as merely a nuisance to be either blocked or ignored. It is true that they eventually reduced the scope of the roof works, but this seems only to have happened as result of persistent pressure from the Applicants and with no acknowledgement at the time that a concession was being made.

51. Similarly in relation to the administration charges, in our view Eagerstates should have treated the Applicants with more respect and should not have ignored several requests for further information and then just sent them aggressive letters chasing the alleged arrears and purporting to impose penalty charges. The hearing bundle contains a considerable amount of correspondence, and whilst we accept that sometimes leaseholders can make unreasonable demands the correspondence in this case indicates that – broadly speaking – the Applicants' concerns were legitimate and deserving of a proper response. Instead, time and again no response or no proper response was forthcoming.

52. The poor management decisions and the poor interaction with the Applicants in relation to the roof works took place during the 2019/20, 2020/21 and 2021/22 years and therefore these are the years in which the management fee should be reduced the most, although there is also evidence of general poor management and therefore the fee needs to be reduced for each year of challenge.

53. Taking all of the above factors into account, the management fee for 2019/20 to 2021/22 inclusive is reduced by 30% and the management fee for the years 2016/17 to 2018/19 inclusive is reduced by 15%.

Roof works

54. A question arose during the course of the hearing as to whether an alleged failure to comply with the statutory consultation requirements could be treated as one of the Applicants' bases of challenge to the cost of these works. It was agreed that the tribunal would make a specific determination on this point.

55. Having considered the Applicants' written submissions, we do not accept that the application can or should be treated as including a challenge on the basis of a lack of consultation. This basis for challenge is not mentioned in the Applicants' Scott Schedule and nor is it expressly mentioned in Mr Hyams' witness statement which effectively serves (together with the Scott Schedule) as the Applicants' statement of case. Whilst we appreciate that the Applicants are litigants in person and that there is information contained in Mr Hyams' witness statement that could potentially have served as the starting point for a challenge on this basis, the fact remains that there is no clearly articulated basis of challenge on this basis; or rather, there was no such challenge until quite late on in the hearing itself.

56. The Respondent is an experienced landlord and is legally represented, but the fact remains that as a matter of natural justice a respondent to an application is entitled to know the case that it has to answer before the start of the hearing. Indeed, in principle it is entitled to have that information long enough before the hearing for it to have time to consider its defence, locate relevant supporting paperwork and seek legal advice if it wishes to do so. Also, specifically in relation to an alleged lack of consultation there is also another factor; a respondent needs to have time to work out whether to respond by making an application for dispensation from the obligation to consult and, if so, on what grounds, and then time to serve that application on all leaseholders.

57. For all of the above reasons we do not treat the Applicants' application – insofar as it relates to the roof works – as extending to a challenge on the basis of a lack of consultation.

58. The Applicants have other bases on which they challenge the cost of the roof works. They challenge the £5,154.24 charge for the additional scaffolding and roof works. In relation to these charges, the evidence indicates that the original scaffolding charges were clearly expressed to include all necessary scaffolding, and therefore there is no justification for making an additional scaffolding charge and Mr Harrison did not seek to offer any justification for the extra charge. Insofar as the

£5,154.24 includes additional roof works and/or additional management fees, the evidence indicates that at best the Respondent through its contractor was simply trying to remedy the inadequacies of the initial roof works and so again there is no justification for the extra charge and again Mr Harrison did not seek to offer any justification. The £5,154.24 charge is therefore disallowed in its entirety.

59. As for the bulk of the roof works charge, namely the £13,947.60, the evidence before us indicates that the works were carried out incompetently and that – as mentioned above in the context of the management fees – Eagerstates were at various points obstructive and uncommunicative in their dealings with the Applicants and generally managed the process incompetently. However, we have already dealt with Eagerstates' own failings in the context of the management fee. Also, subject to the point made in the paragraph below, there is no actual evidence before us that the works when completed did not represent value for money. Therefore, subject to the point made in the paragraph below, there is no basis on the evidence before us to reduce the £13,947.60 charge.

60. The Applicants also seek reimbursement of the amount of £702.36 spent by them remedying certain defects that were not remedied by the contractor. We assume that by this they mean that they wish to exercise a right of set-off. Although the right of set-off is a more common remedy in the county court, it is possible to claim a right of set-off in the tribunal, albeit on a more limited basis: see *Continental Property Ventures Inc. v White LRX/60/2005*. In this case, though, the Applicants' position has not been argued in sufficient detail nor in a manner which would be consistent with the parameters laid down in *Continental Property Ventures Inc.* to enable them to claim a right of set-off as such. However, the Respondent has not disputed that the Applicants spent £702.36 remedying those defects, nor has it disputed that £702.36 was a reasonable amount to spend on remedying those defects, and nor has it disputed that those defects existed. In the circumstances, we are satisfied that this constitutes persuasive evidence that the charges for the roof works were £702.36 higher than they should have been. It is not reasonable to expect the Applicants to pay the full amount for works carried out in a defective manner in circumstances where – at a cost of the £702.36 – the defects were remedied at the Applicants' own cost. Therefore the £13,947.60 charge is reduced by £702.36 to £13, 245.24.

Handover fee

61. The Applicants argue that the £600 handover fee is not payable because nothing was 'handed over' and because they are not aware of anything having been done which could justify a handover fee. The Respondent in response states that it is not a service charge but a cost to the RTM company, but the Respondent does not elucidate further.

Only the Respondent's Counsel, Mr Harrison, was present at the hearing on the Respondent's behalf, and he was unable to say what the fee was for. Accordingly, the handover fee is disallowed in its entirety.

Extra management fee

62. The Applicants have questioned the basis on which the Respondent had sought to charge an extra management fee of £360. The Respondent has offered no meaningful explanation and Mr Harrison was unable to say at the hearing what the extra fee was for. Accordingly, the extra management fee is disallowed in its entirety.

Various other charges for the 2021/22 year

63. In relation to the charge for an electrical call-out for cabling and the EICR report charge, the Applicants have sought to argue that these resulted from or were connected with a leak caused by the Respondent's contractor. However, the Applicants have failed to provide proper evidence on this point (for example a report from an independent surveyor and/or more detailed factual evidence) or any real legal analysis as to why these service charge items should not be payable in these circumstances. Therefore, we do not accept this basis of challenge to these two items.

64. The Applicants have challenged various other charges for the 2021/22 year either on the basis that they believe them to be inflated or on the basis that they consider them to be fictitious. However, the Respondent has provided copy invoices to support the various charges and there is no real substance to the Applicants' challenge.

65. Accordingly, in the absence of a stronger challenge to any of these items they are all payable in full.

Administration charges

66. It is not disputed by the Respondent that the administration charges that have been levied are 'variable' administration charges for the purposes of paragraph 2 of Schedule 11 to the 2002 Act and therefore that they are only payable to the extent that they are reasonable.

67. We have considered the various charges levied by the Respondent. One of those charges is a rent collection fee of £60 as per Eagerstates' letter of 1 March 2023. In purported justification of this charge the Respondent makes a vague reference to the terms of the Lease, but the Respondent is not entitled to levy a charge merely for collecting the ground rent and therefore this charge is disallowed.

68. The other charges all relate to actions taken by or on behalf of the Respondent or Eagerstates in relation to unpaid charges. The Respondent states that it is entitled to levy these charges pursuant to paragraph 7 of Schedule 3 to the Lease on the basis that the Applicants are liable for any costs incurred in contemplation of any section 146 (i.e. forfeiture) notice. However, whilst there is reference to 'possession judgment' and forfeiture in correspondence, we are very sceptical as to whether there was a genuine intention to forfeit the Lease rather than simply to try to shoehorn these charges into the wording of the Lease.

69. In any event, based on the evidence before us the levying of all of these charges was in our view based on a flawed and unreasonable management approach. The evidence indicates that the Applicants were willing in principle to pay all reasonable charges but had certain concerns in relation to various charges and wrote to the Respondent's managing agents to ask them to address those concerns. Whilst the concerns may not always have been expressed in a manner that one would expect of a property lawyer or other relevant property professional, the Applicants are lay people and in that context the concerns expressed and the manner of expressing them were both broadly reasonable. However, instead of addressing those concerns Eagerstates either ignored them or acted in an obstructive or unhelpful manner and then purported to levy charges for non-payment rather than engaging sensibly and professionally with the Applicants. The Respondent's written submissions in purported justification of these charges are very thinly argued, there is no witness statement on behalf of the Respondent, and nobody was available at the hearing to be cross-examined on any factual issues.

70. In addition, it follows from the fact that we have found certain charges not to be payable that the Applicants were justified in raising concerns. Furthermore, even where we have decided that a particular charge is payable in full this is not because the Respondent's own case has been so convincing but more because the Applicants have arguably not approached the case in the right way, and we suspect that the Applicants would have been yet more successful if they had been legally represented or had at least received some competent independent legal advice prior to putting together their statement of case.

71. Accordingly, we are satisfied that none of the administration charges is reasonable and therefore that none of these charges is payable.

Handover date and its relevance

72. The Applicants have argued that they should not have to pay any charges insofar as they relate to the period after the date of handover by the Respondent to the RTM company. In response to the tribunal's further directions the Applicants state that the handover date was 17

December 2021. However, of the items which are being challenged by the Applicants in their application only the handover fee and the extra management fee are stated by the Applicants to have been incurred after the handover date, and these items have both been disallowed by the tribunal in any event.

Cost applications

73. The Applicants have applied for a cost order under section 20C of the 1985 Act ("**Section 20C**") and for a cost order under paragraph 5A of Schedule 11 to the 2002 Act ("**Paragraph 5A**").

74. The relevant parts of Section 20C read as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".

75. The relevant parts of Paragraph 5A read as follows:-

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

76. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under their lease.

77. The Applicants have been successful on a significant number of points and were therefore justified in making the application. The Respondent, by contrast, has been obstructive in its dealings with the Applicants, and the evidence before us indicates that this approach has been a major factor in the Applicants having concluded that their best option was to apply to the tribunal for a formal determination. The Respondent has also not engaged in any detail with these proceedings. In the circumstances we consider it appropriate to make a Section 20C order that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge and to make a Paragraph 5A order that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under their lease.

Name: Judge P Korn **Date:** 3 January 2024

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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 estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,

(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment

(6) An agreement by the tenant of a dwelling … is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.

Commonhold and Leasehold Reform Act 2002

Schedule 11

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable …