FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
AND
IN THE COUNTY COURT AT BRIGHTON

Tribunal Case Reference	:	CHI/00ML/LSC/2023/0112 CHI/00ML/LSC/2023/0150 CHI/00ML/LSC/2023/0151 CHI/00ML/LSC/2024/0065
County Court Claim number	:	K1QZ67Q3 (Flat 1) 385MC411 (Flat 2) 393MC155 (Flat 3)
Property	:	Flats 1, 2 and 3 19 Charles Street, Brighton BN2 1TG
Applicant	:	Nicholas Daniel Joshi & Robert Douglas Clayton (1) Raija Kaarina Green (2) Gary Dan Jacklin (3) Linda Susan Brigden (4) Nicholas Ian Skinner (5)
Representative	:	Mr Callum McLean of Counsel instructed by ODT Solicitors (2)(3)(4)(5)
Respondent	:	Assethold Limited
Representative	:	-----
Type of Application	:	Determination of liability to pay and reasonableness of service charges and and transferred proceedings
Tribunal Members	:	Judge J Dobson Mr P Smith FRICS Mrs J Dalal
Hearing Date	:	15th May 2024
Date of Decision	:	19th July 2024

DECISION OF THE FIRST TIER TRIBUNAL
AND JUDGMENT OF THE COUNTY COURT

Summary of the Decision of the Tribunal

1. **The Tribunal determines that:**

2019- a) in respect of the credit which ought to have been applied £2628.28, being £596.41 for each of the 2nd to 5th Applicants
b) in reduction in service charges demanded £354.00, being £70.80 for each of the 2nd to 5th Applicants

2020- £57.60, being £11.52 per each of the 2nd to 5th Applicants

2021- £2406.70, being £481.34 per Applicant

2022- £44,571.45, being £8914.29 per Applicant

2023- £7111.10, being £1422.22 per Applicant

The total reduction as against the 1st Applicant is £10,817.85.

The total reduction against each of the 2nd to 5th Applicants individually is £11,428.71.

The disputed service charges are otherwise payable.

i) The Applicants' application for the Respondent to pay the Applicants' legal costs of the Tribunal proceedings on the basis of unreasonable conduct on the part of the Respondent and pursuant to rule 13 of The Tribunal Procedure (First Tier Tribunal) Rules 2013 is granted.

ii) The Respondent shall pay the Applicants' legal costs of the proceedings assessed as £12,000.00 by 19th August 2024.

iii) The Applicants' applications that the Respondent may not recover any fees of the proceedings as service charges or administration charges pursuant to Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 respectively were granted.

iv) The Respondent shall pay the Applicants' Tribunal fees in the sum of £300.00 by 19th August 2024.

Summary of the Judgment of the County Court

2. **The Court orders as follows (see separate Order):**

i) The Respondent's claims against the Applicants, being the 1st, 2nd and 3rd Applicants, are dismissed.

ii) The 2nd and 3rd Applicants' application for the Respondent to pay the Applicants' legal costs of the County Court proceedings on the basis of unreasonable conduct on the part of the Respondent pursuant to rule 27.14 of the Civil Procedure Rules is granted.

iii) The Respondent shall pay the legal costs of the 2nd Applicants summarily assessed as £1300.00 plus VAT, total £1560.00, and the legal costs of the 3rd Applicant summarily assessed as £1500.00 plus VAT, total £1800.00, both by 19th August 2024.

iv) There is no order for costs of the proceedings as between the 1st Applicants and the Respondent.

v) The Respondent may not recover any fees of the County Court proceedings as service charges or administration charges pursuant to Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 respectively.

Introduction

3. The parties are referred to by the terms on the front sheet, adopting the usual descriptions given in Tribunal proceedings for the avoidance of confusion. That is notwithstanding that the Court proceedings were issued by solicitors on behalf of the Respondent as named and reflects the fact the Applicants made an application in respect of the service charges payable received by the Tribunal prior to the transfer of the Court proceedings. It is appreciated that different titles would be used in Court proceedings. The numbering given to the Applicants reflects the number of the flats occupied by them. The separate Court Order giving effect to the judgment of the Court- and in light of the determinations by the Tribunal- adopts the usual titles in Court proceedings.

Background

4. The Applicants are lessees of flats as identified (individually "Flat (number)" and collectively "the Flats") within 19 Charles Street, Brighton BN2 1TG ("the Building") under 125 year leases commencing 25th December 1989. The Respondent is the freehold owner of the Building, including the land and other structures included within the freehold title, having purchased the freehold on 8th March 2018. The Applicants became the lessee(s) of their given flats on various dates, the specific dates not being material to this Decision save that the 1st Applicant(s) acquired their leasehold interest in May 2021. That is relevant because the 1st Applicant (which term is used for the 2 lessees collectively) has no identified interest in charges prior to May 2021.

5. The Building is described as an end of terrace Regency- style town house just off Brighton's seafront and has been converted into the 5 flats leased to each of the Applicants. The basement flat is said to have its own entrance accessed via a set of steps from ground floor level at the front, separated from the pavement by railings, with the remaining flats accessed via a front door at ground floor level. The Building is said to be of traditional solid masonry

construction. The Building is mostly rendered but with hanging slates to the side elevation and a bay window to the front ground, first and second floors.

Relevant Procedural History

6. It is not necessary to address all the procedural history of either set of proceedings. However, certain specific matters merit noting.

7. The Applicants made an application dated 26th July 2023 [T6-27] for determination of service charges payable for the years 2018- 2022 inclusive pursuant to the Landlord and Tenant Act 1985 ("the 1985 Act"). It was indicated in a detailed Statement of Case [T29- 46] that the main catalyst for the application was a demand by the Respondent in 2022 for sums in respect of major works. Various other particular items were challenged for the years 2018 to 2022. Mention was made of Court proceedings and a notice served by the Applicants to acquire the freehold. The Applicants further sought orders pursuant to Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering the costs of these proceedings either through the Applicant's service charges or by way of an administration charges.

8. Separate proceedings were issued in the County Court by the Respondent and via Scott Cohen Solicitors against each of the 1st 3 Applicants, being in each case a money claim. The basis of each claim was that there were unpaid service charges and ground rent. The proceedings were subsequently transferred to be administered by the Tribunal by District Judges by Orders, the first set in response to a specific application on behalf of the 3rd Applicant. The proceedings against him had already been allocated to the small claims track. Two transfers took place in late 2023 but the third (relating to Flat 1) only in March 2024. Given that the issues appeared essentially the same and the parties' cases in the other various proceedings should already have been set out (including CHI/00ML/LSC/2023/0112 in which the parties in the Court proceedings regarding Flat 1 participated), the Court proceedings for Flat 1 were tied in with the other proceedings by Directions date 15th April 2024. That claim had also been allocated to the small claims track.

9. A case management hearing took place on 19th December 2023 in respect of the 5 sets of proceedings then administered by the Tribunal office. The Applicants submitted draft Directions, which were said to be agreed. Directions changing the sequence of steps which had been suggested but with the same end result and providing for the Respondent producing financial information for 2023, as it had agreed to, and enabling the Applicants to add any challenges to service charges for 2023. The parties were also permitted to rely on expert evidence about the major works which had been undertaken. The proceedings were effectively consolidated (although the Directions did not say that in terms) by the requirement for one set of documents per party (or multiple parties if jointly represented) for simplicity and clarity.

10. Amongst various other case management applications, an application was made by the Applicants on 12th April for the Respondent to be de-barred from participating in the CHI/00ML/LSC/2023/0112 proceedings in consequence

of failure to comply with previous Directions (save the provision of the 2023 financial information). There were also costs applications but those were left by the Tribunal to follow the conclusion of the substantive case.

11. The Respondent was barred from participating in those Tribunal proceedings. The bar did not extend to the transferred proceedings from the Court, both in relation to the Court elements where the Tribunal had no power to bar participation and no sanction was requested from the Court, and in relation to the Tribunal elements, no reference being made to them. No appeal was received against that barring Order and no application was made to set- aside or vary the Order. On 13th May 2024, Scott Cohen Solicitors Limited, sent a Notice of Change saying that they no longer represented the Respondent in the Court proceedings.

12. The Directions given included directing a bundle to be provided for use at the final hearing**.** 4 PDF bundles were provided amounting to 598 pages all told, rather than the one bundle directed. That was not terribly helpful the Directions having envisaged one single bundle and for good reason. The Tribunal accepts that in part the different bundles reflected the 1st Applicants not being represented by the representatives of other Applicants and preparing separately.

13. Whilst the Tribunal makes it clear that it has read the bundles, the Tribunal does not quite refer to all of the documents in this Decision, it being unnecessary to do so. It should not be mistakenly assumed that the Tribunal has ignored those pages or left them out of account. Where the Court or Tribunal refers to specific pages from the bundle for the Court proceedings, they do so by numbers in square brackets preceded by an indicator of the relevant bundle, so for example for the Tribunal bundle [T]. In the case of the Court bundles, identification is of the particular flat of which the particular Applicant(s) are lessees, so [F1-], [F2-] or [F3-].

The Lease

14. The bundle included the lease for Flat 1 ("the Lease") [T55-78]. It was said by the Applicants and not challenged by the Respondent that the leases of the other flats are the same or substantively the same. The demise of Flat 1 includes a rear patio in addition to the flat itself.

15. The general service charge mechanism in the Lease and the responsibilities of the contracting parties are along fairly standard lines and so need not be recorded in detail in this Decision. Accountants are to audit the books and certify the summary of costs incurred and sums expended which the Respondent must provide to the lessee.

16. Clauses 6.4.1 and 6.4.2 require the Respondent to attend to all parts other than the interior of the flats, including "Remedy all defects in and renew and replaces (sic?) as necessary and keep in good and substantial repair and condition"; to paint or treat the exterior, the front door and essentially communal areas usually painted and those provisions include the exterior of all moveable and opening parts of the doors and windows to the perimeter walls. The lessee

must permit access for the purpose of repair, decoration and similar (clause 2.8).

17. The Respondent must also insure to full re-instatement value and including injury and damage to a visitor (clause 6.2).

18. In contrast, the flat itself, and the responsibility of the lessee, includes the glass in windows and the remainder of all moveable and opening parts of the doors and windows to the perimeter walls.

19. There is provision for a reserve fund in clause 6.4.6.3.1 and 6.4.6.3.2 also provides that any sums received as service charges in the given service charge year and not expended shall be held "on trust to expend them in subsequent years".

The Hearing and after

20. The hearing took place in person at Havant Justice Centre. The Applicants other than the lessees of Flat 1 were represented by Mr McLean. Mr Clayton attended representing himself as a lessee of Flat 1 and in effect and insofar as relevant his comments applied for Mr Joshi, the joint lessee. The other Applicants in attendance were Mr Jacklin and Mr Clayton. There was no attendance by or on behalf of the Respondent.

21. The Judge as a County Court Judge allocated the claim against Ms Green to the small claims track, that claim appearing not to have previously been allocated.

Purported application to vacate the hearing

22. The first matter addressed was a written application to the Tribunal- and it should be made clear there was no N244 application to the Court- said to be made by Mr Ronnie Gurvits of Eagerstates as the Respondent on 14th May 2024, the day before the hearing to "vacate the hearing, consolidate the cases and provide clear directions". "Respondent" is the description Mr Gurvits seeks to give himself in the application. The Tribunal takes the view that it ought to address the lack of attendance of the Respondent and the approach taken fully rather than glossing over it, and commenting on the application to the extent it is appropriate to do that. The matter is only one for the Tribunal as the only forum in which an application was made.

23. The application correctly suggested that there had been no revised Directions provided and any bar lifted, no application even having been received from the Respondent for either which might even potentially have prompted either. There were suggestions of not having received the Applicant's case, that there was no bundle about the service charges and also the rather bold suggestion that it had been "nonsensical" for the Respondent to be barred from participating in the Tribunal proceedings but not the Court proceedings, indicating something of a lack of respect. There was also reference to the Respondent's solicitors not dealing with the case, but without explaining why any issues between the Respondents and its solicitors are matters for this

hearing. The application contended that "we" had been "severely prejudiced" but as to whether that was by the solicitors, by the Respondent getting itself debarred or in some other manner was not made clear.

24. Quite a number of different points are therefore mentioned. Notably, no attempt was made to lift the debarring order, and as identified above, there was no application to the Court in respect of the Court proceedings. What is apparent is that there was at the very least a fair degree of knowledge on the part of Mr Gurvits at least of the position in the case and Directions which had been made and hence the Tribunal considers that his parents, the only officers of the Respondent (and Eagerstates) either also knew or ought to have.

25. Mr Ronnie Gurvits, and indeed Eagerstates, are plainly not themselves the Respondent in these proceedings. There was no authority from the Respondent for Mr Ronnie Gurvits of Eagerstates to make the application on behalf of the Respondent and so despite the obvious connection it was not confirmed that the actual Respondent, as opposed to the particular gentleman from another, albeit linked, company, wished to apply. Whilst the Tribunal accepted that a party was able to instruct any representative to represent it in Tribunal proceedings, and that did not only mean a legal representative otherwise able to conduct litigation, the party does have to instruct that representative. That point had indeed been made in case management Directions only just issued on 14th May 2024. As to what Mr Gurvits intended given that he erroneously named himself as the Respondent was unclear.

26. The Tribunal took the view that in the absence of any identifiable ability for Mr Ronnie Gurvits or Eagerstates more generally to apply, there was no specific application which required any determination. The Tribunal was also mindful that by addressing an application made by someone who had provided no authority from the party to be able to make, the Tribunal might be seen to lend support to the conducting of litigation without an authority.

27. There was also an email sent on the morning of the hearing but that was also from Mr Gurvits of Eagerstates, stating that "Due to the barring and the lack of evidence supplied we will not be able to attend but the application does stand". It was again not entirely clear who "we" related to- the answer may well be the Respondent but with no authority given for Mr Gurvits to speak for it. Equally, as noted above, the barring only applied to 1 set of proceedings out of 7. The reference to a lack of evidence supplied was correct, at least insofar as it intended to refer to the Respondent's lack of evidence. The email also said that there had been an attempt to arrange Counsel. Comments about lack of clarity and lack of documents were repeated.

28. As there was no attendance from the Respondent or a properly authorised representative, it could not be known that the Respondent wished to adopt the application and assertions or might have raised any other points. Similarly, whether it wished to adopt the contents of the email. Given it was apparent that the Respondent was aware of the hearing and able to attend whether represented or not, the lack of attendance was its choice but necessarily did nothing to assist with advancing any position it might have wished to take.

29. However, on a fine balance and to enable consideration of the interests of justice more widely for the hearing to proceed in the obvious absence of the Respondent, the Tribunal considered the position generally.

30. The Tribunal noted that a statement had been submitted by Mr Paul Barnes, solicitor at the Applicant's representatives, late afternoon on 14th May 2024. That stated that any assertion of failure by the Applicants to comply with Directions was untrue and, for example, that a supplemental statement of case plus witness statements had been sent as directed. There had been no response on the part of the Respondent and the Tribunal had no reason to doubt what Mr Barnes said about provision of the Applicants' case and compliance with Directions.

31. The Tribunal also heard from Mr McLean, who made the point that the Respondent could have attended the hearing which it was aware of but also that given the debar it was difficult to see what material difference would be likely to the end result. The Applicants had evidence of having sent the bundle. The cases plainly had already been consolidated and there was nothing unclear. There had been solicitors on record in the Court proceedings but any issues with them were not the fault of the Applicant or the Court or Tribunal. The point was also made that this was the final hearing and time had been set aside for that.

32. The Tribunal retired to consider how to proceed. The Tribunal was mindful that it would not hear the Respondent's side of the case. Equally, the Respondent could have attended. It had been debarred in 1 set of proceedings and so was not able to participate in those unless that Order, made several weeks earlier and not challenged, were lifted, Not only had there been no attempt to do that but there was nothing to hint that any such application had any realistic prospect of succeeding. That said, the Respondent was not barred from participating in the other proceedings and much of the issues were likely to cut across different proceedings. That said, the Respondent had no positive case, having failed entirely to provide one.

33. The Respondent had not provided any explanation as to why it had not attended the hearing of which it was aware and had certainly not provided any basis on which it was unable to attend. Insofar as an attempt to instruct Counsel to represent may have been made, it was both unclear what effort had been put into that and it appeared that any effort had been very much at the eleventh hour when the prospects were inevitably much lower than they would have been if the Respondent had sought to take steps in good time. The presence or absence of Counsel to represent was separate to the Respondent attending and the failure to instruct Counsel late in the day formed no basis for lack of attendance by the Respondent.

34. The fact of that barring was of significance in the context of the position, not least where it was something of which the Respondent appeared to be aware- and certainly its agent was aware. However, the lack of any case advanced in accordance with Directions in the various other sets of proceedings was of more practical relevance.

35. Irrespective of the failure to comply with Directions and the debarring of the Respondent, the Tribunal noted that the Respondent could have assisted it by attending. It could have raised issues with the Applicant's case and may also have been permitted to provide something of an explanation or argument on particular points if the Tribunal had determined it appropriate to disapply the barring in respect of those or more generally to allow some evidence albeit late, which the Respondent could have sought if it had attended. The Respondent might have enjoyed some success in the event that the Tribunal had been persuaded that was overall in the interests of justice.

36. The Tribunal determined that the interests of justice lay firmly in proceeding with what was listed as a 2- day hearing for the various reasons identified above. The lack of attendance by the Respondent at the final hearing the evidence pointed to it knowing was listed significantly in advance with all of the time and costs which would be wasted if that did not proceed weighed heavily and in combination with other factors lending weight to proceeding, outweighed any reasons not to proceed.

37. Returning to the specific application purported to be made briefly, the Tribunal observes that it is quite hard to reconcile the apparent assertion by Mr Gurvits of a lack of awareness of developments in the case on the part of the Respondent and the equal assertion of attempts to seek other directions and have the barring lifted combined with knowledge of the position. There appeared to simply be a collection of contentions which might in an appropriate case go some way to challenging the position but made without regard for whether any contradicted each other or had any discernible basis in fact, or perhaps in the knowledge of those matters but continuing anyway. Consequently, even if the Respondent itself had sought to advance the matters written in the case management application, it is extremely unlikely any would have succeeded in persuading the Tribunal (to which the application was made) to adjourn the final hearing. The Respondent is a frequent participant in proceedings before the Tribunal in particular in consequence of its property portfolio. It would do well to approach proceedings in a different manner and make applications rather better argued and expressed than the application purported to have been made on its behalf.

38. With some caution, given that there was no identifiable ability for Mr Gurvits/ Eagerstates to apply in the first place, the Tribunal determined that it ought to dismiss the application for the avoidance of doubt.

39. For completeness, as there was no application by the Respondent in respect of the Court proceedings, there is no decision specifically to be made by the Court. If the Tribunal had not determined it appropriate to proceed, the Court would have been required to consider whether the Court proceedings ought to be adjourned. In the event, that was not relevant.

<u>Application to strike out claim</u>

40. There was an application made in the Court proceedings by Mr McLean on behalf of the Applicants he represented to strike out the Respondent's claims.

41. Mr McLean argued that the claim is not compliant with the Civil Procedure Rules. They were, he argued, unparticularised, referring simply to service charges, ground rent and costs in a single figure with not even a breakdown.

42. The Judge, sitting as a Judge of the County Court, noted those points but equally that there was a still a determination required by the Tribunal, so to that extent it would be necessary to venture into the subject matters of the claims in any event.

43. The Judge, sitting as a Judge of the County Court, declined to grant that application at that juncture. Whilst the point about the compliance with the requirements of a claim were well- founded, the principal part of the hearing would proceed in any event, being the determination by the Tribunal of the service charges payable. The Court elements of the hearing were relatively limited and the failings in the presentation of the claim could be considered insofar as relevant once the Tribunal determinations had been made.

The substantive hearing

44. The hearing proceeded.

45. The Court and Tribunal received oral witness evidence from Mr Jacklin and Mr Clayton. That evidence is summarised below, it being considered appropriate to do that where the evidence was given in the absence of a party, albeit where that party could have attended.

46. Mr McLean also provided a Skeleton Argument and made oral submissions. The Court and the Tribunal are grateful to Mr McLean, Mr Jacklin and Mr Clayton for their assistance with the cases.

47. Mr McLean reminded the Tribunal in closing of the authority of *Forcelux v Sweetman*, which the Tribunal is always mindful of as a well- established authority about the approach to service charges and which parties often make reference to. As he submitted, the two question identified are.

48. Mr McLean also broadly argued that if the lessees had identified no issue with a matter, it was not reasonable to undertake work- which it will be seen below the Tribunal did not accept. Mr McLean said that the Applicants were concerned that there was a great deal of cross-over between the Respondent, Eagerstates Limited and others in the industry and that the Respondent had been drumming up work for its agent company and contractors. A wide point was made about the number of contractors local to the Respondent and not to the Building or otherwise based a long distance away

49. It was explained to the parties that the Tribunal elements were for all 3 of the Tribunal members to consider but that the Court elements were for the Judge alone and that the other Tribunal members would play no part in that. Given that various matters raised were pertinent to both the Tribunal proceedings and Respondent's County Court claims, it had not been possible to provide a perfectly clear line in the flow of the hearing between the matters for consideration by the Court on the one hand and by the Tribunal on the other.

It was also explained that the Court Judgment would be issued in writing in a similar manner to the Tribunal Decision, notwithstanding that ordinarily the Court would have issued an oral Judgment in claims such as these.

50. The Tribunal and Court take the opportunity to apologise for the delay in providing this Decision and Judgement following the hearing, in consequence of heavy hearing and other commitments. The Tribunal and Court fully appreciate that the parties will have been awaiting receipt of the Decision and Judgement.

51. The Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every matter stated is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Various matters mentioned in the bundle or at the hearing do not require any finding to be made for the purpose of deciding the relevant issues in the cases. Given the number of service charge items involved, the issues as to costs and the Court elements, this is a relatively lengthy decision. Whilst in principle certain of the service charge items could be discussed at greater length, in the circumstances of this case overall and the sums involved as a portion of the whole, it is not considered necessary or appropriate to do so.

52. As will be seen below, the Applicants did not make out all of their arguments in light of the documentary evidence and despite the absence of the Respondent. Equally, where the Applicants did make out their case, and in particular where they were able to present first hand evidence, it is difficult to see what the Respondent could have added to that documentary evidence which might have altered the outcome in the absence of having regularly attended the site and being able to gainsay matters stated by the Applicants, of which there was no hint. Much of the Applicant's case was compelling, including the report about the major works which formed a substantial part of the dispute and in the event contributed over 80% of the reduction in service charges the Tribunal determined.

53. It was a particular feature of the Applicants' case and asserted in the Statement of Case in the Tribunal proceedings, that both the Respondent and its managing agent, Eagerstates Limited, are controlled by Mr Joseph Gurvits and Mrs Esther Gurvits, who the Tribunal understands to be the parents of Mr Ronnie Gurvits. It was suggested that there is no meaningful distinction between the two companies. The Tribunal agrees that the information received indicates a very close link, with the 3 officers of each company being Mr Joseph and Mrs Esther Gurvits and the correspondence address being the same, although of course the companies do strictly have separate legal identities.

54. It was also asserted that the acquisition of freeholds by the Respondent is effectively a means to provide work to Eagerstates Limited as managing agent and to generate an income in that manner. Neither the Tribunal nor the Court required to make any finding about for the purpose of determining this case and firmly prefers not to do so. The Tribunal and the Court are not prepared to draw the inference from the absence of the Respondent at the hearing.

55. The more particular manifestation of that asserted by the Applicants is an allegation that tasks are undertaken, including reports being commissioned, which are unnecessary and designed to generate additional management fees/ justify the management fees and so to shore up or increase the income of Eagerstates Limited and hence the sum received. The Tribunal is not required to make any specific finding about that for the purpose of determining this case either and again prefers not to do that, or to draw any specific inference.

56. The Tribunal instead considers the reports obtained and the works undertaken on their individual merits.

Oral Evidence received

57. The first oral evidence received was that of Mr Jacklin. He had givenw'ritten witness statements, the first about items from 2018 to 2022 [T79- 82] and the second concentrating on items in 2023 [T86- 88] plus in respect of the Court proceedings against him [F3 30- 31].

58. The first matter addressed was the sum passed over by the former freeholder to the Respondent in 2018. Mr Jacklin appeared to accept that was not a matter about charges in itself but he said that there had been a credit at that time, and there was no transparency as to how it was, or it had not been, accounted for. He accepted that reference to the sum as a reserve fund was incorrect and it was not a separate fund, merely a balance. There was only one service charge account.

59. The evidence moved on to 2019 and the Applicant's dispute about drainage work. Mr Jacklin asserted that there had been nothing wrong with the drain and there was no reason to start looking at them. The Applicants had obtained a survey which they said stated that no work needed undertaking. There was no blockage, there was some indicating about de- scaling. The Respondent had ignored the Applicants' report and proceeded with work anyway.

60. Mr Jacklin did not accept that the Applicant's survey had been the third one undertaken overall. He particularly did not recall that survey being on the same day as the survey by Aquevo Limited on behalf of the Respondent and was doubtful anyone had attended at all and any work had been undertaken. However, when pressed by the Tribunal in the light of the contents of the survey and those apparently jarring with his evidence, Mr Jacklin accepted that the Applicants' report identified a crack to the drain and that the report of Aquevo Limited, obtained by the Respondent, identified the same crack. He had not recalled that crack.

61. Mr Jacklin remained doubtful that work had been undertaken. He said there was no evidence of it being done but accepted work could have been undertaken when he was not present. Mr Jacklin accepted there to be reference to de- scaling and bonding but recalled the Applicant's report said that was not necessary. He did know what may have been bonded. Mr Jacklin also said that it had been hard to tie up the work done because of a lack of invoices about the service charges.

62. In terms of window cleaning, Mr Jacklin said that when the Applicants complained that was done, but not otherwise. He said they had complained because they had paid for that work and did not realise (then) that was not the Respondent's responsibility.

63. Mr Jackline was unhappy with the number of surveys, he had not seen a report, just invoices, and did not accept problems with- he appeared to mean the structure of- the Building. He did not accept a fire risk assessment to be appropriate and did not accept attendance to check fire alarms. There are smoke detectors and an alarm, which are hard wired as far as Mr Jacklin knew. He said that the alarms were tested approximately monthly to August 2022.

64. Moving on to 2022, Mr Jacklin disputed that the majority of the major works had even been done at all, for example the side and rear, which needed work. Mr Franklin did not accept that any part of the major works had been worthwhile. Insofar as there had been any work undertaken, he maintained the position expressed in his written evidence that the quality of any work was very poor, for example there had been no preparation before painting such that the paint was already flaking off and essentially all of such work as was carried out would have to be redone. He referred to the report of Mr Coppard- see below- which had been obtained as the Applicants were unhappy with the work and advised to obtain an assessment of it. There were various comments about the limited scaffolding erected.

65. Mr Jacklin accepted that new bulkheads were fitted and it was reasonable to pay towards that, albeit he queried what the problem had been and considered the cost charged was not appropriate. He did not consider that any more than the quote obtained by the Applicant would be.

66. The electric cupboard had two small doors, half a standard door height and a bit wider between the two. It was established that there were two sets of such double doors, the meters being behind the top pair. The photograph in the bundle showed the new doors. They were a couple of inches thick.

67. The Tribunal then heard from Mr Clayton. He had also provided 3 written witness statements, one for 2018 to 2022 [T83- 85] and the second in respect of 2023 items [T210- 211], plus a 3rd in the Court proceedings against Mr Joshi and himself [F1 35].

68. Mr Clayton was adamant that no-one sought access to the rear of the Building. He worked from home. The steps down to Flat 1 were stone, the banister was a metal pole, nothing had changed.

69. For the avoidance of doubt, whilst there was a witness statement from Ms Green in relation to the claim against her in the County Court [F2 32- 34], she was not in attendance and so did not give oral evidence. There was nothing said by her in that witness statement which had not been said by Mr Jacklin or Mr Clayton and so, whilst the usual position that only limited weight could be given to a written statement of a witness who could not be question on it, effectively no consideration of that was required.

DECISION OF THE TRIBUNAL

The jurisdiction of the Tribunal

70. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the lease where necessary to resolve disputes or uncertainties. The power arises from the provisions of the Landlord and Tenant Act 1985 ("the Act")

71. Service charges are (section 18) sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance (potentially improvements) or insurance and the lessor's costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.

72. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable (section 27A). Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and the services or works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable. In particular in relation to on account service charges, no more than a reasonable amount is payable.

73. The Tribunal should take into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold Building as to their duties. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

74. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Insofar as the parties referred to any or the Tribunal identified them, they are referred to below. Whilst the Tribunal is aware of and applied caselaw generally, it is not necessary to cite the many cases of established authority and general application.

The approach to construction of the provisions of the Leases

75. It is well- established law that the Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is not different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

76. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

77. The Tribunal had careful regard to the above when construing provisions in the Leases.

Consideration, Finding of fact and determinations

78. The Tribunal sets out the findings of fact that are of relevance to this Decision and the evidence on which they are based. The Tribunal does not make findings about any matters which are not necessary for the purpose of reaching the required decision. The Tribunal sets out it determinations about the aspects of the service charges in dispute applying the provisions of the lease and the wider law to those.

79. The Tribunal was mindful, particularly in the absence of the Respondent, that the Applicants could not simply put the Respondent to proof and had to advance a prima facie case as to why the service charges may not be payable in the sum demanded or at all before the Respondent would be obliged to demonstrate the charges to be payable. There was a relatively fine line in respect of certain of the items as compared to the, limited, available information about the expenditure in terms of whether the Applicants had done enough and whether the limited information was sufficient for the Respondents to meet it despite the debarring and lack of positive Respondent's case. The answer varied from one time to another.

80. The Tribunal adopts the numbering used in the summary table in the Applicants' statement of case [44- 45] for the period 2018- 2022 for ease of reference.

2018-

Item 1- credit in the service charge account on Respondent's purchase

81. The Applicants' position about this was simple, namely that a credit of unexpended service charge funds existed at the time of transfer from the previous freeholder, Graves Jenkins, to the Respondent and evidenced by an account produced by them showing the sum of £2628.28 held [T318] which the Respondent accepted receiving [T421].

82. However, there was no evidence that the sum had been applied to the service charge account thereafter and the year- end accounts for 2019 did not demonstrate the sum to have been applied to expenditure nor carried forward to any subsequent years [319]. The service charge demands did not reflect that sum being held. The Applicants' case was that the sum should have been applied to expenditure in 2018 or subsequently.

83. The Respondent had offered nothing in response to that, not only in the proceedings prior to being barred but also discernibly at any other time. There was nothing to suggest that the sum had been taken account of when issuing subsequent service charge demands.

Determination

84. The Tribunal determined that no disputed issue arose as to actual service charges for 2018 which required determination. The question was an accounting one as to effect on later charges.

85. The Tribunal accepted that there was the sum which had not identifiably been expended by the Respondent and which remained unspent by the end of the 2018 service charge year. Hence, whilst the service costs for 2019 were not affected, the amount to be demanded to meet them by way of service charges was- there was no need to make demands to the extent money was already available, being £525.66 per relevant lessee (which excludes the 1st Applicant given the purchase later) much as though it was reasonable to demand any balance.

86. It should be explained for the avoidance of doubt that it is arguable that the sum should have been applied in 2018 but plainly there were service charge demands, there were service costs and it may quite reasonably have been less than wholly clear to the Respondent where matters would stand at the end of the 2018 year. Hence, not applying the sums to 2018 service charges has not been shown inappropriate. Nevertheless, by the end of 2018, it will have been apparent that the sum held should be offset against costs incurred in 2019.

87. The Tribunal noted that the certified service charge account in fact was a single page which listed expenditure and not a full set of accounts and that at least the end of year account for Mr Jacklin showed a sum had been paid on account, but there was no indication that was regarded as including a share of the reserve fund held by the previous freeholder, as opposed to payments towards the estimate/ budget.

2019

Items 2 to 4- drains

88. There were 3 separate entries in the 2019 accounts [T319] which were challenged and where it was said the service charges were not payable insofar as they related to a drain service (£153.00), descaling of drains (£354.00) and a CCTV survey, report and descaling (£538.00). This item was covered at relative length in oral evidence as indicated above.

89. The oral evidence of Mr Jacklin had re- iterated the Applicants' written assertion- and the contents of Mr Jacklin's witness statement- that no complaint had been made about the drains. They contended that there was no need for any survey and certainly not a second one within months of the first and also did not accept it was reasonable for a contractor, Aquevo Limited, to attend from what was 85.5 miles away. Further, the written case relied on the report of Express Drainage [T422-427] which Mr Jacklin mentioned, dated 15th July 2019 and reaching different conclusions.

90. Mr McLean made the point that the documents did not refer to bonding or other work to the cracks. That was in response to the Express report identifying a crack to the drain (and debris).

91. As with the other items, there was nothing from the Respondent to explain the reasons for the approach taken by it and the expenditure incurred (and the Tribunal does not repeat the comment in relation to the further items).

Determination

92. The Tribunal determined the disputed service charges were payable save for £354.00, disallowing that part of the service costs, and hence 1/5 of that sum against the service charges of each of the 2nd to 5th Applicants (the 1st Applicant not having acquired the leasehold interest at the time), being £70.80 each.

Note: The Tribunal refers hereafter to the service charges demanded of the relevant Applicants collectively- and so strictly the service costs rather than the actual charges to any given Applicant. The actual service charges payable by a given Applicant need to be reduced proportionately, as the Tribunal returns to when summarising its Decision below, and where those relate to the 1st Applicant, that is to say for the years applicable to them.

93. The Tribunal did not find it unreasonable for the Respondent to have commissioned a report following purchase of the Property, which the Tribunal

understood the item titled "Drain Service" to amount to. The fact that the Applicants had not identified a need for any report or work did not render it unreasonable for those to be attended to. The Tribunal accepted the expenditure to have been incurred and, despite the absence of anything other than the accounts by way of explanation, reasonably so.

94. Whilst the fact that the Aquevo report from July 2019 [T413 to 420] identified 7 elements requiring 'or probably requiring attention and displaced joints and a crack to the drain were identified, that could not have been known in advance and simply the fact that something was discovered to be present requiring attention did not entirely of itself mean that it was appropriate to take a step where that crack was not known about at the time, the fact that there was a matter found to require attention demonstrated that it was a sensible approach for the Respondent to take to check the condition of the drain, and potentially the Property more widely. The same may apply to the identification of scale to the drain, although the Tribunal had never previously encountered the undertaking of work specifically to descale a drain and was more cautious about that.

95. The Tribunal accepted that the survey reports commissioned by the Respondent from Aquevo had plainly been prepared. The Tribunal also accepted that the undertaking of works to the drain was reasonable. Indeed, despite the Applicants' assertion of a lack of defects, for example Mr Jacklin's oral evidence, the Tribunal found the Applicants' own report following inspection apparently on the same day as Aquevo then re- attended, supported there being issues with the drains. That rather undermined the Applicants' position. It was firmly implausible that Aquevo had not attended and by chance had produced a report identifying a crack also identified by the Applicants' report. Notwithstanding an element of uncertainty, on balance the Tribunal also accepted that work was undertaken. The more detailed report contains photographs, including apparently within a drain, which supports there having been an attendance and steps taken. The Tribunal noted that at least the March 2019 job sheet identified no charge was made for travel. The Tribunal found the undertaking of work was within a range of reasonable and rational approaches available to the Respondent where it was for the Respondent to decide whether to have work undertaken. The Tribunal did not find the Applicants' report to be determinative in the circumstances.

96. The reason for the disallowance of £354.00 was that despite the Tribunal accepting the generality of a report and work as appropriate. It was unclear why there might have been similar work undertaken on 2 occasions- assuming the descriptions given by the Respondents in the accounts to be correct and considering it reasonable to hold the Respondent to those. The Tribunal noted that the March 2019 job sheet [412] mentioned a quote for further works being able to be provided, hence it was plausible that other works had been identified as potentially appropriate and might be undertaken on a later occasion. However, that was the high point of any explanation and the Respondent had offered no more.

97. The Tribunal was not satisfied on the information received that two attendances and two sets of work were appropriate. Given that there was a

more detailed report on the second occasion, and it was difficult to distinguish the work on that occasion from the indicated earlier work, on balance the Tribunal determined the more appropriate course was to disallow the lower of the two service charges- hence the £354.00, rather than the £538.00- against the 2nd to 5th Respondents, so £70.80 for each of them.

2020

Item 5- window cleaning

98. The evidence on behalf of the Applicants was very firmly that window cleaning had not been undertaken and the written case the same. That was unchallenged. The Respondent had offered nothing in response.

Determination

99. The weight comfortably lay with a lack of window cleaning being carried out and so the charge being for a service not carried out. It was determined unreasonable to charge for work not undertaken. The Tribunal disallowed the item of £72.00 in full insofar as applicable as against the 2nd to 5th Respondents, so the amount of £14.40 each.

Item 6- drone survey

100. The Applicants did not dispute the drone survey having been undertaken. Their case was that there was no need for that survey. The Applicants also relied on the Respondent having commenced a consultation [T428-429] regarding major works some months earlier, which they suggested indicated knowledge without the need for a drone survey.

Determination

101. The Tribunal allowed this service charge in full.

102. The Tribunal considered that the obtaining of a survey of the Building by use of a drone and footage produced was a reasonable step to take to assist in ascertaining the condition of the Building and the repair and maintenance work required. The Tribunal considered the evidence to support on balance the survey having been undertaken. The Tribunal addresses other surveys below.

103. The Tribunal noted the Applicants point about the previous consultation. The Tribunal does not know why that did not proceed and in particular whether further information about the Building was thought to be needed. Neither does the Tribunal speculate about an answer one way or the other. Suffice to say that where there is no dispute as to the drone survey having been undertaken nor any dispute as to particular cost, the Applicants have failed to demonstrate the service charges for the item not to be reasonable.

2021

Items 7 and 9- Fire health and Safety risk assessment and service

104. The Applicants' case was that there had recently been a risk assessment undertaken by the previous freeholder and provided when the Respondent had purchased and so there was no reason for a further one.

105. The Applicants argued in relation to the service that they were also charged £488.50 in relation to "fire alarm and emergency lighting service". They did not challenge that item. They said the cost of the disputed service was unreasonable for duplication.

Determination

106. The Tribunal accepted that it was reasonable for the Respondent to have undertaken a risk assessment and allowed the £300.00.

107. The Tribunal identified that there was an entry in the accounts for the cost of the assessment said to have been undertaken and determined that it could sufficiently rely upon that. The assessment to which the Applicants referred pre- dated March 2018 and so was at least 3 years old. The Respondent was entitled to consider that a further assessment should be undertaken.

108. However, given the work to deal with the fire alarm and emergency lighting, there was nothing to explain the reasonableness of further work being undertaken. Whilst it was in principle possible for the health and safety service to have gone beyond the fire alarm and emergency lighting service, there was nothing to explain that it had, why it had and as to the cost incurred. The Applicants had advanced a sound prima facie case on the basis of the duplication, which had not been met with any explanation.

109. The Tribunal therefore disallowed £722.70 of this item, so £144.54 per Applicant.

Item 8- survey report

110. In relation to this survey, the Applicants' position was that there has been surveys the previous year and no works were planned for 2021. They asserted that there was no reason for the survey (unless it was "routine", a description not explained).

Determination

111. The Tribunal disallowed this item in the whole sum of £1080.00, so £216.00 per Applicant.

112. The Tribunal was prepared to accept that a survey may well have been undertaken. However, that was not sufficient to determine that the Applicants should pay the costs of it, at first blush £900.00 plus VAT and so not a modest sum (although it was far from clear that included travel costs, given that 10 hours charged for travel would probably have been a significant sum in itself).

113. There was no evidence before the Tribunal as to why the survey had been commissioned. In part that was because there was no-one from the Respondent present who could offer any explanation. However, it was also because no report from the survey was available which might have given any indication of its purpose, particularly setting out what the surveyor was instructed to do and why. There had, as the Applicants argued, been a number of other surveys. The Respondent had not demonstrated that any service charge related to the survey report was reasonable.

Item 10- bay window frames re- sealing

114. The Applicants advanced 2 arguments in relation to this item- that the work was not within the Respondent's repairing obligations and that the work was not undertaken, there being no attendance at the Building. Mr Jacklin had given oral evidence about the latter.

Determination

115. The Tribunal accepted the evidence of the unchallenged and clear evidence of the Applicants that no work had been undertaken. Whilst on another occasion, the Tribunal might have determined the provisions of the Lease and then, if relevant, gone on to make any findings of fact, in this instance there was a very simple finding of fact which could be made and which rendered the effect of the provisions of the Lease irrelevant. Therefore, in this instance, the Tribunal adopted that course and so does not discuss the provisions of the Lease unnecessarily.

116. The Tribunal therefore disallowed the £624.00 for this item, so £120.80 per Applicant.

2022

Items 11 and 16- Fire health and safety testing, services and repair and Fire health and safety assessment

117. The Applicants challenged these items- £1820.46 and £408.00 respectively on the basis that the system was "perfectly adequate" and in full working order and no need to carry out works had been identified.

118. The Applicants also asserted that no work had been undertaken including fire health and safety testing. They said that the Respondent produced a report which required that fire alarm sounders should be installed if not already present, whereas they already existed. It is said that was raised with the Respondent and that the Respondent did not proceed with works. However, it has still sought to recover as service charges the costs that it would have incurred.

Determination

119. The Tribunal allowed the sum of £450.00 and disallowed the remainder, being £1778.46, so £355.69 per Applicant.

120. The Tribunal accepted on balance that some servicing and testing of the equipment each year was a reasonable step. That was a usual step to take and it would be reasonable for that to include cleaning and checking the sensors and more general cleaning and checking as appropriate. The Tribunal allowed what it considered to be a sum within a range of reasonable cost in respect of that. The Tribunal was not sufficiently persuaded that had not been undertaken.

121. In contrast, there was no evidence to support repair having been required and still less having been undertaken. Indeed, the evidence supported a lack of need for any work and that the managing agents or the Respondent had been insufficiently careful in including as a cost incurred a sum which had been anticipated to be spent but which had not been.

122. The Tribunal was also unable to identify the need for a risk assessment which, on the information available appeared to duplicate an assessment undertaken only a year earlier. The Tribunal did not consider it reasonable to repeat the assessment after only one year, unless there was anything which had been identified as having changed or requiring particular attention, of which there was no evidence. The cost for item 11 in particular was additionally high unless there was actual work also required, which had not been demonstrated. The Tribunal was further troubled that a report had been produced which said that sounders should be installed on every floor unless already present where they were present and there had either been a failure to attend the Building or a failure to identify the sounders.

123. The Tribunal was mindful that it was removing the majority of the cost said to have been incurred in relation to these items. However, that was the consequence of the lack of evidence of work being undertaken and otherwise the expense being reasonable and where the amounts were relatively considerable and so required proper explanation.

Item 12- Replacement and installation of intercom buzzer and speaker unit

124. The evidence from the Applicants was that any work undertaken had not resolved the problem which had been experienced. Mr Jacklin accepted that there was an issue with the intercom to Flat 3 but not otherwise. However, he said that issue continued- it still did not work.

125. More specifically, the Applicants asserted that no work was undertaken at all, the panel being the same as it had been. Alternatively, if work was undertaken they were undertaken so badly that service charges should not be payable in relation to it, given that the intercom continued not to work.

Determination

126. The Tribunal disallowed the item in full, so in the sum of £750.00, so £150.00 per Applicant.

127. The Tribunal noted the cost incurred to be significant for what was indicated in the description to be one intercom buzzer and speaker. The Applicants had amply raised issues both with work being undertaken at all and the quality of that, requiring the Respondent to explain that. The Respondent had failed to demonstrate that the cost was reasonable or indeed that any work of merit had been undertaken, even if the work had been undertaken at all. The Tribunal reaches no determination as to whether there had been attendance and work attempted given the determination that even if there was, it was not work chargeable as service charges.

128. The Tribunal considered it clear that the Respondent had failed to meet the challenge and demonstrate the charges demanded, or any charges, to be payable.

Item 13- Drone to assess building structure and surveyor to assess and report

129. The Applicants to an extent sought to deal with this item and the next 2 items together. However, whilst the Tribunal also does so to an extent below, insofar as practicable, the Tribunal prefers to address the items separately.

130. The Applicants challenged there being a second drone survey in a 2- year period. They also queried what that might have added to the other surveys and asserted that none of the lessees had complained about structural issues. In addition, it was noted that a surveyor and construction team were said to have attended and a query was raised about the attendance.

Determination

131. The Tribunal disallowed this item for £942.00 in full, so £188.40 per Applicant.

132. Whilst the Tribunal addresses this and the next 2 items largely separately as far as possible, the Tribunal acknowledges that there is a degree of overlap in the comments.

133. It was noted that there are 3 entries in relation to surveys and to an extent that lent to support to both cases. One the one hand, it was not a surprise that 3 surveys at a combined cost of over £2700.00 would prompt a desire for an explanation. On the other, there was potential logic in the surveys. This was a year in which a programme of major works was instituted- of which more below- and it was plausible that may be a report about the Building and then a maintenance schedule and that those may attract separate charges. It was plausible that the works or simply the involvement of a surveyor at the time prompted consideration of revaluation for insurance purposes, or the timing of that could have been coincidental.

134. However, a drone survey had been undertaken in 2020 with no information being provided as to the outcome and still less anything to explain the need for a further survey in 2022. The drone surveys were relatively close together

and hence the need for the second of those required explanation. No adequate explanation was forthcoming from the Respondent.

135. The Tribunal identified that it was possible that a surveyor may attend or plan to attend but be unable to inspect some elements of the Building without the provision of scaffolding, at potentially significant expense. It may that a drone would provide a less costly solution to enable viewing of those areas. However, the Tribunal is venturing into no more than general comment and to go further would be speculation.

136. The survey said to follow the drone survey required explanation for the drone survey in the first place. Equally, a survey had been undertaken in 2021. The Tribunal accepts of course that it disallowed the cost of that, although that was not on the specific basis that the survey was not carried but rather the need for it and whether it was for a reason which was reasonable in the context of charging service charges had not been demonstrated. The disallowance of one survey did not of itself demonstrate the reasonable of charges for another. If the survey was linked to preparing a maintenance schedule, it had at least not been demonstrated that it was required in order to enable that in addition to previous surveys or how and to what extent separate charges were appropriate, and in the sum demanded.

137. Where the Applicants challenged the need for the various surveys, the Respondent had not met that challenge.

Item 14- Surveyor to prepare insurance reinstatement cost assessment pre- planned maintenance schedule

138. The Applicants contended that it was not reasonable for this item to have attracted a separate fee. It was suggested that the valuation could have formed part of other work by surveyors. In addition, it was also argued that the cost on insurance had remained more or less constant between 2018 and 2022.

Determination

139. The Tribunal allowed this item.

140. The Tribunal was mindful that there is a need to check the value of a property to insure that the insurance cover is for a suitable sum from time to time. There was no indication that there had been any other valuation in the recent past. At first blush the instruction of a surveyor for that purpose was reasonable and the cost was not strikingly excessive.

141. The Applicants had failed to advance even enough of a prima facie case, In effect, there was little more than a query about there being a separate fee and not enough that where the step taken was not obviously unreasonable, the Respondent needed to do more to demonstrate the item to be payable. Whilst it is not really necessary to say more, the Tribunal also identifies the valuation for insurance purposes to be a somewhat different task to surveys dealing with structural matters and does not consider that any saving in approaching the matter differently was demonstrated as possible. Further, the fact that the

cost of insurance had been similar in recent years, on the same valuation each time in all likelihood, that was not accepted as a sustainable argument that there should be no revaluation.

Item 15- Surveyor to prepare pre- planned maintenance schedule

142. The Applicants had accepted this item.

143. It was originally indicated in the statement of case that it was not accepted as chargeable separate to other surveys, although the Applicants did not advance a point about the particular item with vigour, accepting overall that some involvement of a surveyor was reasonable.

Determination

144. The Tribunal noted the £690.00 to be agreed to be payable.

145. In the event, there was no requirement for the Tribunal to make any determination, although the Tribunal indicates that if there had been, and whilst the Tribunal did not address its mind to the element at any length, at first blush the expenditure appeared reasonable in the amount demanded. That initial view did not turn on the disallowance of other survey fees.

Item 17- Replacement of bulkhead and fault-finding investigation and Item 18- Replacement of RCB to Type A and changing bulkheads to pass test

146. The Applicants asserted that "replacement of bulkhead" on the one hand and "changing bulkheads" on the other are the same item of work- and Mr Jacklin's statement identified it as a small item- and that there has been duplication of charges. The fee was described as "surprisingly large".

147. It was also said that the actual work involved replacing 3 standard light fittings and a simple circuit breaker, where the cost of those items was £83.94 from a supplier- the invoice from BML Group Limited said they had paid £395 [T340]. The Applicant suggested no more than 4 hours of work was required for the electrical work- based on a quote [T443] obtain by the Applicants- and that it ought to have been undertaken by a local electrician.

Determination

148. The Tribunal allowed £602.00 for items 17 and item 18. The Tribunal disallowed the balance £526.00, so £105.20 in respect of each Applicant.

149. The Tribunal determined that the Applicants had not demonstrated that it was not appropriate for the bulkhead to be looked at, whereas in principle the Tribunal considered that it was. The Tribunal considered that having undertaken an investigation, it was reasonable to take relevant work.

150. The Tribunal was unable to identify why the work following the investigation ought to have taken more than the approximately 4 hours suggested by the

Applicant, although the Tribunal identified that a contractor might well charge for a day in practice, potentially having to book out a day, and that would increase the cost. The Tribunal also could not identify why that or the subsequent work could not have been undertaken by a contractor based locally The Respondent had failed to demonstrate those matters. It was in principle for the Respondent to instruct the contractor it chose but that approach needed to be reasonable in the context of the work. The specialised, or contrastingly standard, nature of that was relevant.

151. Hence, whilst the Applicants had failed to demonstrate that the work should not have been undertaken, the Respondent had failed to demonstrate why the cost was significantly greater than the above figure, although was still not bound by the Applicant's figures, rather there was some range of prices reasonable, particularly if the contractor sourced the equipment and charged for a full day. The Tribunal therefore limited the service charges to a sum which it considered reasonable in the absence of any evidence to support greater sum.

Item 19- Removal of loose tiles in entranceway and replacement

152. The Applicants relied on a survey report- see further below- and ALSO particularly a photograph of the area [T444]. The photograph showed two missing black tile to the middle of the edge of the step and broken checkerboard tiles to the side

153. The Applicants alternatively asserted that if there had been works carried out, those were to such a poor standard- which the first statement of Mr Jacklin re- iterated that the Applicants ought not to be charged the cost as service charges.

Determination

154. The Tribunal disallowed this item in full so £498.00, being £99.60 per Applicant.

155. The Tribunal noted that the invoice from Superior Facilities Management Limited provided a photograph of the previous condition of the tiles and of the work undertaken [T347]. The photographs before the work indicated 4 missing black tiles plus the broken checkerboard ones. At first blush therefore work had been undertaken.

156. However, given that two tiles were missing not long later, the evidence indicated that the work had not been undertaken to a reasonable standard. It was not possible to be confident other tiles had been dealt with much better and would last any reasonable time. The Applicants' photograph showed the hazard tape fitted- see below- and there was no reason to doubt it was taken following the works. On balance and whilst this was rather less clear-cut than other determinations, the Tribunal considered that in light of the concern as to the standard of work, it was not reasonable for there to be service charges.

Item 20- Installation of heavy anti duty slip tape to staircase nosing

157. The description of this item is set out per the Applicants' statement of case but observing that the words "anti" and "duty" appear to be the wrong way around.

158. The Applicants again assert that if any work has been undertaken, the standard of any work is so poor that there is no service charge reasonably chargeable in relation to it.

Determination

159. The Tribunal disallowed this item in full, being £420.00 in total and so £84.00 per Applicant.

160. This was in fact not work to a staircase but rather to the step from the pavement to the entrance way and couple of steps from that to the front door where the first of the steps had been the one where work was undertaken to tiles. The invoice was dated the same date as the above item and for work apparently undertaken at the same time. The Tribunal noted the photograph taken by the contractor related to this item [T349], which showed 3 short strips of hazard tape.

161. The Tribunal considered that this was a very small job which was undertaken on the same occasion as the previous item and should have added no more than a token amount to the invoice. A cost of £420.00 was utterly unreasonable. There was no indication of the cost of the tape, the sort of item which it appeared to the Tribunal quite likely the contractor would possess generally. In the absence of being able to identify the actual cost of a small quantity of tape and that ought to have been extremely modest at most, the Tribunal did not consider it appropriate to allow any sum. The Respondent had no case which explained why the work was required- there was only the inflated invoice of the contractor making a recommendation in brief terms, which was not compelling.

Item 21- External works as per section 20 notice

162. This was the major item for the year, approximately 85% of the sum challenge for the year and approaching 80% of the entire dispute as originally presented, so for 2018 to 2022 inclusive. The works were said to have been undertaken in November 2022 by Superior Facilities Management Limited, comprising 10 items as listed in the section 20 Notice of Intention [T435-439].

163. The Applicants particularly relied on the survey report of Mr Bruce Coppard MRICS dated 23rd June 2023 [T212- 317] in respect of this item. That report was said to express the opinion that much of the work that had been contained in the section 20 notice of intention had not been carried out; various other elements were not completed and where work had been undertaken, the quality was so poor that the work requires re- doing. The Applicant's consequently asserted that none of the cost of the works should be

payable- £33,300.00- nor the fee charged by Eagerstates Limited for management and supervision- £5994.00.

164. The report was detailed- as the page numbering indicates- including 64 photographs overall and with commentary about those. Mr Coppard recorded that he had not had sight of the tender documents but did not suggest that he lacked ample information from the notice of intention and generally.

165. The report of Mr Coppard does indeed make the criticisms asserted by the Applicants and in very clear terms. He also found the period of one week including erection of scaffolding on 14th November 2022 to completion by 18th November 2022 to be "a very unusual and extremely short duration for works of this type and extent", whereas a contract duration of several weeks would be expected. He also suggested that for the short duration the input from Eagerstates by way of supervision "would have been very limited" and he described the Eagerstates invoice as "very excessive and unreasonable". The contractor price was less than the likely range.

166. It is not practicable to set out much of the contents of so detailed a report in this Decision. Aside from criticisms of the work undertaken, concern was expressed about damp penetration. The photographs show, amongst other things, some decoration to the front elevation but poorly undertaken, including poor preparation and patchy appearance, and not including the front door; apparently no decorating to the rear elevation, including window frames given the condition of those, which both in terms of the elevation generally and the windows in particular required somewhat more than merely decorating; missing or loose hanging slates; corroded chamber cover remaining and the effects of damp penetration to Flat 1 and Flat 3. Photographs of the very limited scaffolding used had been provided by the Applicants.

Determination

167. The Tribunal disallowed this item in full, so £39,294.00 overall and £7,858.80 per Applicant

168. The Tribunal was mindful that the disallowance was of a significant sum with consequent significant effect. The Tribunal took some care to identify whether there was any extent that the Applicant had not advanced at least enough of a case to require the Respondent to have to demonstrate the reasonableness of the works and the appropriateness of service charges in the sum demanded or otherwise.

169. The Tribunal also noted that Mr Coppard was reliant in respect of the works on an estimate and a quote (the former from the contractor instructed), the invoice for the work, the notice of intention and the Statement of Estimates and did not see any schedule of works. However, the Tribunal considered that there was ample for Mr Coppard to understand the nature of the works. He also received photographs which were included in the bundle.

170. However, the Tribunal accepted the clear opinion of Mr Coppard to be correct and the detailed narrative to be supported by the strong photographic evidence. In the absence of any discernible benefit and where the work which had actually been undertaken was indicated to be of such a low standard, the Tribunal determined that there was no sum which was payable as service charges. It is plainly not reasonable for there to be service charges for matters not attended to and neither is it where the work is not of a reasonable standard. There was no level of service charges which the Tribunal considered it reasonable for the Applicants to pay.

171. The report of Mr Coppard indicated a troubling approach by the contractor in apparently charging for work not undertaken and also a failure of project management by the Respondent or relevant agent not identifying the lack of work or the poor quality of work. The photographs from the Applicants indicated the scaffolding to have been inadequate and unsafe [also at T353 to 360] and, noting it is all within the limited front curtilage of the Building, suggests a failure to obtain any scaffolding licence from the local council.

172. On the premise of the invoice to the contractor having been paid, that failure leaves the Respondent with a significant bill to pay from its own funds. However, the agent sought to charge a substantial fee for administering the works. The fee for the purported supervision and management was not payable where the evidence indicated that either there had in fact been no supervision and management or such had been of so low a quality. The fact of a relatively substantial fee charged by the agent for a service not performed or performed to any acceptable standard was also troubling.

Item 22- Bannister to basement re-fitting

173. The Applicants argued that the invoice provided by the Respondent indicates the work to be required because the steps could not otherwise be safely used, which the Applicants denied. The steps lead down to the basement flat, Flat 1. It was said that the banister had never been loose or unsafe, there had never been a complaint about the item and that there was no need for the work to be undertaken. The first statement of Mr Clayton, lessee of Flat 1, was very clear about that and that apart from one time on which he rang and spoke to Mr Ronni Gurvits there had been no response to his queries.

Determination

174. The Tribunal disallowed this item in full, so £390.00 overall and hence £78.00 per Applicant.

175. The lack of complaint by the 1st Applicant, the principal user of the steps, is not determinative- there could have been no complaint but yet an issue identified by the Respondent and properly attended to. However, there was no evidence of what that issue might have been. The work therefore may have been reasonable, but the Applicants had raised sufficient for the Respondent to be required to meet it and the Respondent had not done.

2023

Insurance March 2023/2024 and broker's fee

176. The Applicants argued that the cost for building insurance of £4258.61 amounted to a 48% increase on the cost for the previous years which Mr Jacklin described as "incredible", asserting that no claim had been made against the previous policy and said that no explanation had been provided by the Respondent for such a large increase.

177. The Applicants also relied on two Aviva Property Owners policies. They said that on the face of those documents, the Respondent had sought a mid- term adjustment of the policy in 2022 and covering a period 23rd August 2022 to 28th February 2023 at a cost of £3,069.21 and then cover for 1st March 2023 to 29th February 2024 at a premium of £3983.10.

178. The Applicants relied on the evidence of Mr Jacklin that the cost was unreasonable for a Building of this nature. It was also said that such part of the sum as related to a broker's fee- the amount of that being uncertain- was not recoverable. An alternative quote of £2648.75 had been obtained, sent to the Applicant's solicitor by the broker.

Determination

179. The Tribunal allowed the sum of £3000.00 and disallowed the balance £1033.10, being £205.52 per Applicant.

180. The Tribunal considered that the extent of the rise in the cost of building insurance was in itself sufficient to provide a challenge which the Respondent was required to meet by explaining the cost of the insurance. The inability of the Applicants or the Tribunal to reconcile the amount charged for insurance with the sums on the policy schedules was also ample to require the Respondent to provide an explanation. The Tribunal was limited to the documents included in the bundle and did not have information with regard to previous policies of insurance, the premia for which were not items of dispute. It did not entirely assist that the policy period did not accord with the service charge accounting year and so some apportionment may have taken place, although that is not uncommon.

181. The Tribunal noted that the asserted increase followed a revaluation for insurance purposes in the previous year and inferred that those were not entirely coincidental. However, as to how a reduction in the sum insured resulted in an increase in premium, if that was the cause or one of the causes, was at best not obvious. It might have potentially explained the mid- term adjustment in 2022. The Applicants asserted a significant increase and there was no challenge to that. That said, the Tribunal took notice that insurance costs have in general been increasing and so an increase over previous years' figures in itself was not unexpected.

182. The Tribunal accepted that there was no apparent justification for the Respondent obtaining £10million of employer's liability cover but equally,

there was no evidence that had impacted on the cost of the policy (or any extent of that).

183. It may be that a policy could have been obtained at a cost of £2648.75 and with the same cover as the Respondent obtained or rather which it was reasonable to obtain (although the Tribunal was a little cautious about that having been sent to the solicitor). However, even if so, that does not make the above figure the maximum reasonable one for the service charges. It was for the Respondent to decide which insurance quote to accept, subject to a requirement to test the market and act reasonably. The Tribunal does not accept the Applicants' argument that a broker's fee was not payable in any event under the terms of the Lease and the Applicant failed to go far enough for the Respondent to be required to explain that element. Rather an appropriate fee was recoverable as part of the premium.

184. Nevertheless, where there had been a significant increase in the policy premium and the Applicants had raised that, the Respondent was obliged to explain generally and it had failed to. The Tribunal considered it appropriate to reduce the fee to the maximum it considered reasonable in the absence of any explanation for any higher one.

Additional Insurance March 2023/2024

185. The Applicants also argued that there was no explanation for the need to incur this cost, having addressed this item in conjunction with the previous one. It is not necessary to repeat matters recorded above. The Applicants contended that there was nothing which would have necessitated any additional insurance being obtained.

Determination

186. The Tribunal disallowed this item in full, so £225.51 total, so £45.10 per Applicant.

187. There was nothing before the Tribunal which explained why additional insurance had been taken out which could demonstrate it to be chargeable as service charges. In the particular instance, the Applicants' challenge, whilst imprecise, was sufficient for the Respondent to need to explain and the Respondent had not done so.

Common Parts Cleaning

188. The Applicants accept that service charges are payable for the cleaning of common parts and accept that cleaning took place. No issue is raised with the standard of the cleaning that it prevents a charge being payable.

189. However, the Applicants argued that in 2022, the cleaners had attended twice monthly and in 2023 they only attended once per month. They also contended that the common parts amounted to a few square metres of hallway and a staircase. The cost in 2022 had been £858.00 and it was unclear why cost had risen "so dramatically".

Determination

190. The Tribunal allowed the sum of £600.00 and disallowed the balance, namely £696.00, being £139.20 per Applicant.

191. There was no evidence that the position of the Applicant was incorrect and supporting there having been cleaning more regularly- or at greater length. The jump in cost of cleaning was substantial and by highlighting that, the Applicants had raised sufficient of a challenge for that to need to be met, which it was not.

192. On the premise that the Tribunal considered that the cleaning company was unlikely to charge for less than a 2- hour slot, the figure allowed by the Tribunal is £50.00 per month, which the Tribunal considers doing the best it can is likely to allow for 2 hours attendance plus potentially some travel plus a token for materials and the cleaning company making proportionately more allowance for its costs and consequent profit than it would have done visit by visit for 2 visits a month. That travel should not have been from Essex where the company is based but locally and the Tribunal assumes that in practice locally- based cleaners were used by the company.

Window Cleaning

193. The Applicants say that they requested the service be cancelled in September 2023 on the basis that the Lease does not provide for the Respondent undertaking such cleaning as part of its responsibilities to the Applicants and does not permit any service charge to be demanded.

Determination

194. The Tribunal disallowed the item in full, namely £312.00, so £62.40 per Applicant.

195. The Tribunal notes that the Lease identifies the glass in the windows as forming part of the demised flats and does not provide specifically for the Respondent being responsible for cleaning the windows (although it notes that argument was not raised about earlier years). It was not explained why window cleaning has been undertaken and charges for. As there was no identifiable requirement for the Respondent to seek to have the work undertaken, it is not a service cost which is required to be incurred and it is unreasonable to charge service charges in relation to it.

Fire Health and Safety Testing, Services and, separate item, Repairs Fire Health and Safety Assessment and, separate item, Fire Door inspection and emergency light

196. The Applicants' case was that they had been provided with invoices only reaching a total of £528 in respect of the fire, health and safety testing, service and repairs. However, they denied even that sum, on the basis that the

relevant company, JHB Fire Services, had not attended and the work had not been undertaken.

197. The Applicants additionally asserted that there is no fire door at the Building and so one could not possibly have been inspected.

Determination

198. The Tribunal allowed the sum of £800.00 and disallowed the balance of £1596.00, so disallowing £279.20 per Applicant.

199. The Tribunal again accepted on balance that some servicing and testing of the equipment each year was a reasonable step, remaining of the opinion that this was a not uusual step to take. However, there was no evidence for a repair having been undertaken and no explanation as to why a further risk assessment was required generally and why anything specific was required in respect of fire doors. The purpose of a risk assessment and why required again was not demonstrated.

200. The Tribunal concluded with some caution that the cost which had been demanded of itself indicated something had been done beyond usual testing. On the other hand, the Tribunal identified the specific reference to fire doors to be new, the Tribunal accepted the Applicant's case that there was no such fire door and so concluded that part of the charges could not be payable.

201. The Respondent's position could not be put higher in the absence of evidence for the work carried out. The Tribunal considered that the Applicants had failed to demonstrate that there should be no charge and had failed to demonstrate that charges ought not to exceed by a margin those allowed the previous year but beyond that it had been for the Respondent to explain the charges.

202. The Tribunal noted this to be one of a number of charges which at first blush would appear reasonable in managing a property, risk assessments from time to time being another. However, it was difficult to avoid reaching the conclusion- and the Tribunal did reach it- that there had been charges for usual sorts of costs irrespective of whether the work had actually been undertaken in respect of this particular property.

Pathway works

203. The Applicants accepted that an invoice had been provided, for the sum of £750.00 and from a company Superior Facilities Maintenance. However, they said that no pathway works had been carried out and the invoice relates to work to the steps. The Applicants said that were no trips hazards and no work to the steps to the basement flat entrance was required. Mr Clayton's 2nd statement was very firm that there was nothing needing attention and no work was carried out.

204. The Applicants noted that they had been charged for dealing with trip hazards in 2022 and the only change from photographs at that time was that hazard

tape had been removed. Insofar as work was involved in clearing up mess made by the Respondent's decorators, that was also said not to be something for which there could reasonably be charges.

Determination

205. The Tribunal disallowed this item in full, so £750.00 and hence £150.00 per Applicant.

206. The Tribunal accepted the Applicants' case that it was not apparent what, if any, work had been undertaken and with what purpose, at least during that particular service charge year. The Respondent had not demonstrated the work to be reasonable and required. In relation to this item and others, it may have been that a survey report or other assessment would have provided relevant information as to why work was required, although it would not have added anything in relation to whether work was actually undertaken or to a reasonable standard.

Electrical Cupboard Works as per section 20 notice

207. The Applicants argued that the need to undertake works to the electrical cupboard had not been identified on a risk assessment and the advice had been given by the contractor which was instructed to carry out the work. The Applicants nevertheless accepted that works had been undertaken and their better argument related to the cost of those. They said it was unnecessary for a contractor to attend from central London and the cost was substantially excessive, suggesting a reasonable cost of £400.00- £240.00 for a carpenter and £160.00 for the door, in the light of telephone enquiry by the Applicants' solicitor.

Determination

208. The Tribunal allowed the sum of £750.00 and disallowed the balance £2,200.00 (including the £450 administration fee charged by Eagerstates), so £440.00 per Applicant.

209. The Tribunal noted the argument that the need for works to the cupboard had not been identified on a risk assessment but nevertheless accepted it to be logical that there be a fire door fitted to the electrical cupboard and with no evidence of there already being a suitable one. However, it may have come about that the work was undertaken, it was at first blush appropriate to undertake the work and the Applicants accepted that work had been undertaken. The Tribunal did not identify a particular issue in relation to this item with the works having been first mentioned by a contractor.

210. The service charges were substantial for what did not appear complex work. The Tribunal accepted that the appropriate door would have needed to be assessed, that there would be a charge for the item and that it would have needed fitting and noted the carpenter approach on behalf of the Applicants said that the job could be done "within a few hours", somewhat imprecise though that was. The Tribunal did not receive evidence to demonstrate that

any experienced carpenter in Brighton would charge a maximum of £240.00 per day and that the Respondent could not reasonably select a contractor at greater cost, nor that the Respondent was limited to £160.00 for the cost of the door. Nor indeed that there may be no charge to inspect and assess the existing door. It was, as previously noted, a matter for the Respondent as to who it instructed and what it paid, subject to not stepping outside a reasonable range for the work. The Tribunal allowed the maximum it considered within a reasonable range of costs for the Respondent to incur.

Inspection and cleaning of downpipes and, separate item, Gutter Cleaning

211. The Applicants said that there are no visible gutters to the front of the Building. They did not identify what was in place for dealing with rainwater around the front of the Building. They made no mention of the downpipes to the Building in their statement of case. Mr Clayton's 2nd statement said that the "main gutters" are to the rear.

212. The Applicants' case was that the work to the gutters was not undertaken, relying on the fact that those to the rear were only accessible through the basement flat leased to the 1st Applicant and access had never been requested and given. Hence effectively it was impossible for work to have been carried out. Mr Clayton's witness statement re- iterated that.

Determination

213. The Tribunal disallowed the first of these items in full, being £156.00, so £31.20 per Applicant. The Tribunal also disallowed the second of these items in full, so £504.00, being £100.80 per Applicant.

214. The Applicant had raised a challenge as to what had been done and why, indeed in part had identified that work could not be carried out. No explanation had been given by the Respondent, including as to how work might have been possible to at least some of the gutters (assuming there to be others around or about the front whether visible or not). In addition and at least in terms of the gutters, bearing in mind the height of those, there appeared likely to be a need for a tower scaffold or equivalent safe means of access. There was no indication of that which might have enabled the work to be undertaken.

215. The Respondent failed to demonstrate how the work had been undertaken to any part of the Building. The fact that the Tribunal accepted that no access had been afforded to the rear of the Building, as it did so find, called significantly into question work to the gutters and with it to the downpipes, which were at first blush related matters.

Tribunal Decision

216. It follows from the determination that some service costs/ charges demanded of the Applicants as a whole and individually are disallowed for each of the service charge years.

217. The sum of £2628.28 received by the Respondent in 2018 ought to have been applied to the service charge account and have reduced the sums required to be demanded as service charges to meet the service costs. In respect of each of the 2nd to 5th Applicants, the service charges are reasonable in a sum secondly reduced to apply a proportionate share of the service charge credit and hence by £525.66 per Applicant. That reduction ought also to have been applied in 2019.

218. Regarding the 1st Applicant, as the sum received by the Respondent ought to have been applied in earlier service charge years and it has not been demonstrated why the 1st Applicant ought to benefit from that having acquired the lease in May 2021, the reasonable service charges payable by the 1st Applicant are not reduced because of the credit.

219. In respect of each of the Applicants, the service charges demanded of them are reasonable in a sum secondly further reduced for the other reasons explained above by the sum between them collectively and individually as follows below:

(2nd to 5th Applicants only) (and excluding the £2628.28/ £525.66 above)
2019 £354.00, being £70.80 per Applicant;
2020 £57.60, being £14.40 per Applicant.

(All Applicants)
2021 £2406.70, being £481.34 per Applicant;
2022 £44,571.45, being £8914.29 per Applicant;
2023 £7111.10, being £1422.22 per Applicant.

220. The total reduction for the 1st Applicant is therefore £10,817.85. The total reduction for each of the other Applicants is £11,428.71.

221. In general, the approach to service charges and the amounts invoiced, called into significant question the quality of the record keeping and checking and in particular the management of the services provided and works undertaken to the Building, or nor provided or undertaken as the case may be, hence the quality of the management generally. In the absence of specific evidence that the Respondent or its agent deliberately sought to charge for matters which it knew had not occurred, the Tribunal concludes that the Respondent and its agent failed to take appropriate care, both where there would be a cost to lessees and in any other identifiable circumstances.

Costs of the Tribunal proceedings

222. The Applicants' made an application for the Respondent to pay the Applicants' legal costs of the Tribunal proceedings on the basis of unreasonable conduct on the part of the Respondent and pursuant to rule 13 of The Tribunal Procedure (First Tier Tribunal) Rules 2013.

223. Mr McLean referred to the relevant test and referred to the written assertions of how the Respondent had behaved unreasonably. Specifically, it had failed to engage at all save for making applications to vacate the hearing and

criticising the Directions and had taken little or no steps to defend the case or alternatively to narrow issues or reach agreement. Given various lowish value items, he said that there was scope to narrow issues if there were reasonable explanations put forward. The Applicants had been put to significant time and expense.

224. Save to the extent that costs are recoverable as between parties pursuant to Rule 13 of the Rules, costs are not payable as between parties to proceedings before this Tribunal, unless one or other party has a specific contractual entitlement.

225. The basic power of the Tribunal to award costs is found in section 29 of the Tribunals, Courts and Enforcement Act 2007, which states that costs shall be in the discretion of the Tribunal but subject to, in the case of this Tribunal, the Rules. The Rules then proscribe that discretion substantially.

226. Rule 13 provides that:

> "The Tribunal may make an order in respect of costs only –
> a) where there are wasted costs
> b) if a person has acted unreasonably in bringing, defending or conducting proceedings……."

227. The leading authority in respect of the rule 13 (b) is the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander* (and linked cases) [2016] UKUT 290 (LC) (referred to below as "*Willow Court*"). It is worth bearing in mind the status of the guidance given by the Upper Tribunal in its decision. It is not uncommon to hear practitioners refer to the *Willow Court* "rules" or "tests". But that is strictly speaking wrong. Although the Upper Tribunal's decision in *Willow Court* was intended to be of general application, it does not purport to lay down any "rules" at all.

228. The position was explained in *Laskar v Prescot Management Company Ltd* [2020] UKUT 241 (LC), that *Willow Court* suggested "an approach to decision making which encouraged tribunals to work through a logical sequence of steps, it does not follow that a tribunal will be in error if it does not do so." The question is "whether everything has been taken into account which ought to have been, and nothing which ought not, and whether the tribunal has explained its reasons and dealt with the main issues in such a way that its conclusion can be understood, rather than by considering whether the *Willow Court* framework has been adhered to". The Upper Tribunal emphasised:

> "That framework is an aid, not a straightjacket."

229. In *Willow Court*, the Upper Tribunal suggested three sequential stages should be worked through, summarised as follows:

> Stage 1: Whether the party has acted unreasonably. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.

Stage 2: Whether the tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness, and effect of the unreasonable conduct.
Stage 3: Discretion as to quantum. Again, relevant considerations include the nature seriousness and effect of the conduct.

230. Whilst it is not strictly necessary to work through those stages because there is no imposed "straightjacket", the Tribunal considers that in this instance, and indeed in most instances, taking up the suggestion of the Upper Tribunal is the appropriate course to adopt.

231. The burden is on the applicant for an order pursuant to rule 13. And it is undoubtedly the case that orders under r.13(1)(b) are to be reserved for the clearest cases.

232. Rule 13(1)(b) is quite specific that an order may only be made "if a person has acted unreasonably in … defending or conducting proceedings". Under the Tribunal Procedure Rules, the word "proceedings" means acts undertaken in connection with the application itself and steps taken thereafter (rule 26).

233. Such an application does not therefore involve any primary examination of a party's actions before an application is brought (although pre-commencement behaviour might be relevant to an assessment of the reasonableness of later actions in "defending or conducting proceedings").

234. The Tribunal agreed that the Respondent's conduct was unreasonable because the Respondent had variously failed to attend the case management hearing, had failed to provide its case in relation to the various Tribunal proceedings, had failed to attend the hearing and had thereby wholly failed to assist in explaining the service charges demanded and in clarifying or reducing the issues. The Respondent had failed to meet its obligations to assist the Tribunal and otherwise had almost entirely (the exception provision of some 2023 financial information) failed to comply with Directions.

235. The Tribunal considered whether that ought to result in a costs order being made. The Tribunal concluded on this occasion that it should.

236. The Tribunal was mindful that the determination that there should be a costs order did not at all mean that order must be for all costs or otherwise the reasonable costs for the proceedings as a whole, On the other hand, the rule does not limit the costs order to simply the additional costs which directly arise from the unreasonable conduct. The Tribunal must consider the appropriate level of costs to be ordered in the round.

237. The Tribunal therefore considered the costs details provided on behalf of the Applicants, by way of a statement of costs different to the form used in Court proceedings and essentially an item-by-item record of time. The Tribunal accepted that as providing ample information to enable assessment of the costs to be undertaken, although the amount of any given type of work was not simple to identify.

238. The Tribunal determined that the appropriate level of costs to order the Respondent to pay in respect of the costs of the Applicants as a whole is £7,500 plus VAT for solicitors' costs, the £300 Tribunal fees and £2500 plus VAT for Counsel's fees. That is a total of £12,300.00.

239. The Tribunal applied a composite rate of £225.00 per hour for the work across the fee earner and considered the time it regarded as reasonable to spend and for the other side to pay. The Tribunal noted that 5 different fee earners had been involved, at different levels, much of the work by senior fee earners at a higher hourly rate. However, given the nature of Tribunal proceedings and the intention those can be conducted by parties without legal representation and as there was no case advanced by the Respondent to meet and therefore the work related to the Applicants' cases, the Tribunal considered an award of costs at any higher rate not reasonable as between the parties.

240. The time involved was some 81.5 hours, producing as originally claimed a sum of £20,707.00 for the Tribunal proceedings. That is a very substantial sum for Tribunal proceedings and the time involved similarly so. At the very least, there is likely to have been some duplication given the various fee earners and there was work which appeared likely not to be recoverable as between the parties irrespective of the circumstances.

241. The Tribunal considered the work on an item-by-item basis and then looked at the figure produced, adjusting that as appropriate in the context of the case as a whole. There were numerous communications with chambers, including chambers from which counsel was not identifiably instructed on either side to undertake work at the relevant time, time was charged for emails received which is not time which can be expected to be recovered and where charges for items received generally ceased at least 20 years back, the time spent on the bundles were greater than reasonably recoverable (and where there was not the single bundle sought) and the there was longer spent in April on application forms not strictly needed and costs submissions where there was no realistic prospect of any costs order at that time. Those are simply examples at the later stages of the case and not intended to be comprehensive.

242. Whilst it is repeated that the Tribunal's ability to award costs is not limited to the specific costs demonstrated to arise from any unreasonable conduct, it is far from irrelevant that there is little in the schedule which where it is apparent that cost arose from the Respondent's conduct and rather the lack of response is considered more likely to have reduced the work involved. The Tribunal weighed the various relevant considerations to arrive at the appropriate award of costs taking the circumstances of the case as a whole. In doing so, the Tribunal concluded that the appropriate award was that indicated above.

243. The Tribunal considered Counsel's fee for a case management hearing listed for 1 hour to be substantially excessive. It was not identifiable why that could not have been amply dealt with by a fee earner with the Applicant's solicitors and involving not more than 2 hours of preparation at an absolute maximum. The reasonable sum was reduced to £750 plus VAT.

244. Counsel's fee for the hearing, of £5700 plus VAT was accepted to be subject to a reduction of £1450 plus VAT in light of the completion of the case in 1 day, rather than the 2 provided for. In relation to the reduced sum of £4250, the Tribunal noted there to be a Skeleton Argument as well as the other preparation and advocacy but regarded that as optional and a relatively common part of the work, noted the pages of the bundle and the lack of any witness on behalf of the Respondent to cross- examine. Indeed, there was no positive case of the Respondent to be addressed. The Tribunal considered that a fee of £3250.00 plus VAT was the maximum that could be reasonable as between the parties for the work likely to be required.

245. Those figures for the hearings were the sums which the Tribunal considered reasonable assuming that all Counsel's fees were to be awarded. It has been explained above that is not the only proper outcome where there has been unreasonable conduct. Having identified the maximum which might reasonably be awarded, it was then necessary to consider the sum that ought to be.

246. The Tribunal concluded that taking matters in the round, the appropriate sum to order the Respondent to pay to Counsel's fees was £2500.00 plus VAT.

247. The Tribunal also considered the applications for recovery of the Tribunal fees incurred by the Applicants, identifying the matters mentioned above and in particular that the Applicants had been substantially successful in challenging the service charges originally demanded by the Respondent. This element was not concerned with unreasonable conduct but rather the wider question of who should pay the fees incurred.

248. The Tribunal determined that it was appropriate that the Applicants recover the fees of £300 paid out for the application and hearing fees.

249. Mr McLean also advanced the Applicants' applications that the Respondent may not recover any fees of the proceedings as service charges or administration charges pursuant to Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 respectively.

250. Section 20C (3) of the 1985 Act, provides "the … Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances". The Tribunal is given a wide discretion. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.

251. The provisions of section 20C were considered in Re: *SMCLLA (Freehold) Ltd's Appea*l [2014] UKUT 58, where the Upper Tribunal held that:

> "although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances" (at paragraph 25), "an order under section 20C interferes with the parties' contractual rights and obligations, and for

that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances" (at paragraph 27).

252. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger KC suggested that, when considering such an application under section 20C, it is:

> "essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order …"

253. Whilst there is other caselaw in respect of general principles, it does not add substantively to the matters to be considered in this case and in practice much will depend on the specific circumstances of the particular case.

254. The Tribunal determined that it was appropriate to grant both of those applications.

JUDGEMENT OF THE COUNTY COURT

255. The County Court issues have been considered by Judge Dobson alone. The Court has had regard to the determinations of the Tribunal. The Court has noted the provisions of the Lease between the parties as identified and/ or quoted in the determination of the Tribunal. It does not repeat those. The Court adopts the titles given to the parties in the Tribunal proceedings for the purpose of this Judgement and for consistency. As explained above, the separate Order adopts the usual titles in Court proceedings.

256. The Respondent, as Claimant in the Court proceedings, has claimed the sum of £5713.73 against the 1st Applicant [F1 3-4], the sum of £9766.08 against the 2nd Applicant [F2 3-5] and the sum of £5686.93 against the 3rd Applicant [F3 3-5] as unpaid service charges and ground rent and without providing further detail, an inadequacy challenged by Mr McLean as discussed above. The Claim Form against Mr Clayton has the name of Mr Ronni Gurvits as the signatory and purportedly the Claimant Respondent; that of Ms Green named Mr Ronni Gurvits as "manager"; that against Mr Jacklin has the typed name of the Respondent, which of course is a company, whereas the form had to be signed by a specific person and the capacity in which that was done ought to have been identified. The Court does not find it helpful to address further any issues as to signatures in this instance.

257. The Defences asserted breach of the relevant Protocol, that accounts did not reconcile with the claims and that the costs charged were not reasonably incurred. They also said that service charges were for items excessively priced, duplicated, for work not undertaken or of poor quality.

258. The bundle contains no evidence of ground rent demands having been made, still less that they are valid. It is not possible to discern if there are in fact any sums by way of ground rent which are claimed to be payable or whether the Respondent has just used some standard wording, and it is additionally not possible to identify any given sum for ground rent if there is any. However, on its face, the Claim Form claims unpaid ground rent to the date of the issue of the claim. Given the lack of evidence for any, the claim for any ground rent to 2023 is dismissed.

259. With regard to service charges, the County Court acknowledges the determinations of the Tribunal in relation to the charges payable and not payable and adopts those as it ought.

260. The Court considers it cannot be discerned from the scant information in the Claim Form which service charges the Respondent asserted to be unpaid and payable. It cannot be identified whether those are particular ones or overall totals and whether the sum includes any service charges which the Tribunal has found are payable and which are unpaid. As noted in the Applicants' cases, e.g. the statement of Ms Green [F2-32], no sums from the accounts and other information obviously reconciled with the amounts in the Claim Forms.

261. It was, however, for the Respondent to demonstrate that there are service charges which have been determined to be payable and which are unpaid. The

Respondent has failed to do so. At first blush, the sums claimed by the Respondent are significantly smaller than the sums demanded as service charges of the first 3 Applicants but disallowed by the Tribunal- £10,817.85, £11,428.71 and £11,428.71 respectively. The net effect is that somewhat more service charges demanded are not payable than the sums claimed.

262. The 1st 3 Applicants have not paid the service charges disputed by them and hence those sums would have been owed. The likelihood is that the sums pursued by the Respondent included those and those sums are not payable on the basis of the facts found and determinations made by the Tribunal. The Respondent has therefore failed to demonstrate that the sums claimed against the first 3 Applicants are payable by them. The claims for unpaid service charges are dismissed. It follows that there is no sum on which interest could be payable and that the claims for interest must also be dismissed.

263. The claim fails in its entirety.

Costs of the Court proceedings

264. The 2nd and 3rd Applicants applied for the Respondent to pay the costs incurred by them in defending the claims brought against them by the Respondent. The 1st Applicants did not bring any claim for costs and so the only matter requiring determination in relation to them was whether any costs should be awarded to the Respondent.

265. The Applicants were successful in those defences as the substantial judgment sets out. The first question in relation to the 1st and 2nd Applicants was whether that ought to result in an order for costs in their favour. The secondary question and only relevant in the event of a positive answer to the first question, was the appropriate amount of such costs.

266. The Respondent's claim had been allocated to the small claims track. In the normal course, there is no recovery of costs as between parties in that track. The Applicants sought costs on the basis of unreasonable conduct on the part of the Respondent. The Court noted the provisions of CPR 27.14 and in particular (g), which make plain that the Court is able to exercise its discretion to award costs further to the limited sums otherwise recoverable where a party has behaved unreasonably.

267. The Court accepted that there had been unreasonable conduct on the part of the Respondent.

268. The Respondent had failed to properly particularise its claim at the outset, rendering it difficult to identify exactly what amount was charged for each of the elements referred to – service charges and ground rent- and for what period. The Respondent had then failed to engage with the proceedings. The Respondent had also failed to attend the hearing and to assist the Court by explaining anything of its case. As noted above, irrespective of an inability to instruct Counsel, there had been no good reason for the Respondent's lack of attendance.

269. The Court determined that it was appropriate in exercise of its discretion and in the light of the conduct to order the Respondent to pay costs of the 2nd and 3rd Applicants.

270. The Court considered the various schedules of costs which had been served on behalf of the Applicants in relation to the Court proceedings. Given that each of the Court proceedings had been allocated to the small claims track and in any event the hearing was dealt with in one day, indeed the Court aspects in somewhat less than that in the event, it was determined appropriate to conduct a summary assessment of the costs.

271. Costs of the 2nd and 3rd Applicants were therefore summarily assessed taking account of the Statements of Costs in summary assessment form provided and the representations of Mr McLean. The amount of the recoverable legal costs of the 2nd Applicant was summarily assessed as £1300.00 plus VAT, total £1560.00. The amount of the recoverable legal costs of the 2nd Applicant was summarily assessed as £1500.00 plus VAT, total £1800.00.

272. There would not in the usual course be any written decision in a summary assessment of costs and the Court does not seek to provide one in this instance. However, in the event that it may assist.

273. The Court applied a composite rate to the work undertaken. The Court also particularly bore in mind the amounts in dispute, the track and the lack of any case advanced by the Respondent to which the 2nd and 3rd Applicants needed to respond. The Court also considered that the decision to award costs because of unreasonable conduct fell short of it being appropriate that those costs be awarded on an indemnity basis. The Court considered the sum appropriate in light of those matters and stepped back to look at the overall picture before concluding the appropriate sums.

274. The Court determined in respect of the 1st Applicants that the Respondent, which had entirely failed and had been found to have behaved unreasonably, had demonstrated no reason at all why it ought nevertheless to recover any costs incurred. Rather the appropriate order would have been very likely to be the same as that made in favour of the 2nd and 3rd Applicants if the 1st Applicants had incurred any costs of which they sought recovery.

275. There is no order for costs of the proceedings as between the 1st Applicants and the Respondent.

276. The Court also noted the determination of the Tribunal in respect of any potential later recovery of costs by the Respondent from the Applicants. The Court considered it appropriate to make a like order in the Court proceedings, the bases for the determination by the Tribunal all equally applying.

277. The Court therefore decided that the Respondent may not recover any fees of the County Court proceedings as service charges or administration charges pursuant to Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 respectively.

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decision

1. 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 date this decision is sent to the parties.

2. 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.

3. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

4. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

5. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case. The date that the judgment is sent to the parties is the hand-down date.

6. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

7. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties:

1. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

2. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.

3. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.