



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

Case Reference : **LON/00BB/LSC/2022/0297**

Property : **Flat 11, 269-271 High Street, London E15 2TF**

Applicant : **Mr Raymond Shaw (Flat 11), Shatha Al-Sudani (Flat 1), Jason Wong (Flat 2), Grant Corr (Flat 4), Jasvinder Singh Dhingra (Flat 6)**

Representative : **Mr Raymond Shaw and Cheyenne Kiernan (wife of Mr Shaw)**

Respondent : **Assethold Limited**

Representative : **Mr Piers Harrison – Counsel
Eagerstates Limited**

Type of Application : **Payability and reasonableness of service charges (section 27A Landlord and Tenant Act 1985)**

Tribunal Members : **Judge Dutton
Mr K Ridgeway MRICS
Mr J Francis QPM**

Date of Hearing : **7th & 8th June 2023 and 4th & 5th September 2023 with final determination reconvene on 2nd November 2023**

Date of Decision : **9 January 2024**

DECISION

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DECISIONS OF THE TRIBUNAL

1. The Tribunal makes the determination thus set out on the attached Scott Schedule and considering it just and equitable to do so makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) that none of the costs incurred by the Respondent shall be recoverable from the Applicants by way of service charge.
2. The Tribunal also determinates that under the provisions of paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 the costs of these proceedings are not to be deemed to be cost-recoverable under the terms of the lease.

THE APPLICATION

1. The Applicant on behalf of himself and four other leaseholders seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable in respect of three years, 2019/20, 2020/21, 2021/22 and also a review of the estimated service charges for the year 2022/23 but this did not figure in the proceedings before us. The Applicants are long leaseholders of the property known as Whitecross apartments, 269 – 271 High Street London E15 2TF. The Respondent is their landlord.
2. Directions were originally issued on 17th November 2022 setting out details of the dispute. There were instances of non-compliance with the directions and indeed a threat to de-bar the Respondents, however that was not followed through. A further directions hearing was held on 26th April 2023 by video resulting in the matter being listed for a hearing on 7th and 8th June 2023. In fact, the hearing could not be concluded on those two days and was adjourned to 4th and 5th September. On 12th June further directions were issued giving the parties seven days to produce dates to avoid for a reconvene and by 7th July to exchange any further documents they intended to rely on. In fact, the production of further documents was not complied with on the part of the Applicant, for somewhat unconvincing reasons, but we allowed the late production of such further documentation intended to provide more information on the involvement of NHBC and insurance issues. We also asked the parties to consider making any concessions that they thought might be appropriate.
3. We cannot help but comment on the sheer volume of documentation which has been produced in this case. We started off with an initial hearing bundle running to some 2,300 pages. Once there had been the first two days further documents were added which increased the bundle to 2,752 pages.
4. Notwithstanding that, in readiness for the reconvened hearing in September, Miss Kiernan produced a statement running to 81 pages and Mr Shaw a further short statement.
5. Within the original bundle was a statement of case prepared by Mr Shaw running from page 141 to page 1,143. By contrast the Respondent's statement of case was essentially one page. The Scott Schedule had been produced running from pages 81 through to 138. There had been some engagement by the Respondents in

respect of this Scott Schedule but their replies to each query were fairly perfunctory and repetitive.

6. The Respondents did not in truth engage with the proceedings. They instructed Counsel, Mr Piers Harrison, who attended the hearing on all four days and provided us with a document which was headed 'Skeleton argument for the Respondent'. He went through some of the entries on the Scott Schedule for the years in dispute and we have noted all that was said. We are grateful to him for his assistance in this regard, although it would have been helpful, to say the least, if the Respondent had attended the hearing on at least one of the four days.
7. During the course of the hearing, we appeared to have received no less than three bundles. The Final Hearing bundle for the hearing in September has 2,526 pages. There is, however, an earlier bundle which merely refers to documents under tab headings which runs to 2,752 pages. The first bundle which we had for the hearing in June runs to 2,300 pages. We have utilised the Final Hearing bundle but this confusion as to the bundles and the documents contained therein has not helped us. This coupled with the Applicant's almost obsessive forensic review of each and every item of expenditure has made this case very difficult to deal with.
8. We have indicated above the directions that we issued following the first two days in June. Notwithstanding the limited information that we required, not only did we receive some documents from NHBC and with regards to insurance, but we received a lengthy witness statement of Miss Kiernan in which she went over not only matters that had been discussed at the first hearing but in truth sought to expand upon much that was set out in Mr Shaw's witness statement. This is not what we had requested and is not provided for in the directions. Mr Harrison objected to the inclusion of the statement particularly with regard to matters that had been dealt with in June and its lateness. For our part, we have come to the conclusion that it is inappropriate for the Applicants to seek to add further witness statements to the proceedings, which were not in accordance with any of the directions that we have issued. In those circumstances, therefore, we do not propose to respond in any way to the matters that are raised by Miss Kiernan in her witness statement as we consider these have already been the subject of Mr Shaw's lengthy statement.
9. It had initially been our intention to have completed the Scott Schedule with comments in respect of the various items in dispute. However, such is the bulk of documentation which has been delivered to us, we do not think that that will do adequate justice to the issues that are before us. Accordingly, we propose to make use of the Scott Schedule as it sets out the items in dispute and includes in truth the only relevant comments that the Respondent has made. This means that in turn this decision will be far lengthier than we would ordinarily have wished but we see no choice but to proceed on this basis. We should, however, give credit to Mr Shaw for producing a document which set out the invoice page numbers and the references to his statement of claim in relation to each item. This certainly did provide some assistance to us.

EVIDENCE AND FINDINGS

Year 2019/20

10. The first matter we will deal with therefore is the question of **insurance** for the year 2020/21. It is right to record that for the earlier year the Tribunal had capped the insurance at £410 per flat. This presumably reflected the state of repair of the building, which was a factor which Mr Harrison in his skeleton argument put forward to suggest the increase in the premium to the amount claimed of £23,478.20. This is not a claim which is subject to s20 consultation.
11. It is noted from the bundle that the premium through Arch Insurance UK Ltd discloses a policy excess of £10,000 in respect of floods. One might have thought that this would have resulted in a reduced premium. However, in the following year at we see that the premium has reduced to £11,707.19 although the policy excess for the escape of water remains at £10,000. Accordingly, it seems to us that the suggestion that the increase in the claims history and the policy of insurance being altered to include a much higher policy excess, does not sit comfortably with the premium charged in this year. The Respondent's comments are unhelpful. We consider that one should look at the premium for the following year when nothing can have changed in which a much reduced premium is sought. Accordingly we find that the premium payable for the year 2020/21 should be that which was paid the following year, namely £11,707 and we therefore reduce the sum claimed to that amount.
12. The next matter that we turn to is the apparent attempted recovery by the Respondents of **expenses incurred by the previous freeholder**. These appear on statements of account, for example at page 2086 for Flat 1 it shows various items of expenditure highlighted from the freeholder. Our mathematics indicates that there is a sum of some £13,236 to be credited back. After applying the appropriate percentages this would seem to give a refund of something in the region of £1,155.
13. Mr Harrison asked us to consider page 2086 which shows the sums due at £4,434.95 and to then move forward to page 2138 where the balancing charge is shown at only £3,126.05. Although the Respondents have not helped themselves in this regard, we accept Mr Harrison's submission that this reduced balancing charge reflects a credit of those items of expenditure which the previous freeholder had charged and which the Respondents attempted to include in their demands, although it has to be said, promptly agreed to withdraw them. In those circumstances, therefore, we find that there is on the face of it no further refund due to the Applicants and this applies to a number of entries on the Scott Schedule to which we will return in due course.

Common Parts Cleaning, Item 4

14. The allegations raised by the Applicants is that Section 20 consultation was required, that reports given to the managing agents by Mr Shaw and others were not actioned and that the costs were not reasonable. In addition, there appears to be charges for rubbish removal, which were, it is alleged, as a direct result of the Respondents mismanagement and the costs should be capped. Mr Shaw goes into this in some detail in his witness statement from paragraph 39 onwards and we have noted all that has been said. The payment to the previous freeholders is no longer an issue. It appears that Doves Contract Cleaning Ltd, a company that is regularly used by Eagerstates carried out cleaning from January of 2020 and at

page 1430 is an invoice for the first period up to and including March of 2020. This included rubbish removal in February. The total inclusive of VAT was £1,164. This was followed by a further invoice on 1st May recovering April's fortnightly cleaning cost of £292.52 and a further £250 for rubbish removal. Further invoices for later periods were also included and these are shown at pages 1430 to 1434. It was said by Mr Shaw that Doves did not deal with rubbish removal properly. Apparently they did not take the bins out on the due dates, which resulted in bins disappearing and rubbish being left. We were taken to a number of invoices from Mr Shaw complaining about the cleaning and the frequency of attendance and the matters were not dealt with properly. No contract for the cleaning has been provided.

15. An alternative cost was obtained from GCC Facilities Management which appeared to indicate that there would be cleaning services provided two days a week at £578.49 plus VAT per calendar month. It appears that the cleaning would have been on Tuesdays and Thursdays for three hours on each occasion and the specification sets out what was to be undertaken. Unfortunately as a comparable this is a bit like chalk and cheese. However, there appears to be no doubt that the standard of cleaning was not great as evidenced by the email Mr Shaw sent to others in 2021 following a meeting he had with the Doves cleaners. Accordingly doing the best we can, and on the basis of the apparent poor service as raised by Mr Shaw in May of 2020 and when considering the alternative quote that was obtained referred to above, it seems to us that it would be appropriate to reduce the cost in respect of the common parts cleaning from £3,800.75 to £2,800.
16. There then follows on the Scott Schedule items at paragraphs 5, 6, 7, 8 and 9 which have been disputed as having been relating to the previous freeholder which the Respondent has conceded and which we have already dealt with.
17. We therefore move on to item 10, Clearway Hire Steel Security. We are not wholly clear why this has been challenged as the Applicants accept a credit was shown in the 2020/21 accounts. We will say no more about this element.

Drain Cleaning, Gully Covers Etc, Item 11 on the Scott Schedule

18. The invoices for this work are to be found at pages 1452, 2458, 1461 and 1468. The fact that the Applicant's suspect there may be maintenance contract of course is a matter of conjecture and the Respondent's reply is that there is no such long term contract in place and every visit has a report showing what has been carried out. In his witness statement, Mr Shaw lists a number of items that he says he challenges at paragraph 60 on page 157 of the bundle and complains that the work has not been referred through NHBC. Mr Shaw does not produce any reports that might assist so we assume that they are not available.
19. In respect of these items if one considers the documents before us at page 1453 it appears to be confirmation as to the works that were carried out on 29th January 2020 and subsequently billed at a price of £306 inclusive for three hours' work. There is also photographic evidence provided. This is repeated in respect of the other invoices. We do not consider that the challenge made by the Applicants is sustainable. We therefore allow the sum of £2,511.01 as this supported by the invoices, which also have a narrative report. We will deal with later years as and when they arrive.

Surveyors for Insurance Purposes, Item 12

20. The invoice for this is contained in the final hearing bundle at page 1477 showing a charge of £1,950 plus VAT. No alternative quote has been provided by the Applicants. The survey report has been provided to us and it is conducted by JMC Chartered Surveyors & Property Consultants from Prestwich in Manchester, a company that is frequently used by Eagerstates Limited. The report indicates the details of the inspection on 18th February 2020 and on our assessment does exactly what it was intended to do which is to give rebuilding costs. This can only of course be taken at the time of the assessment. It confirms that it has been carried out in line with RICS Guidance and that the report is intended for building insurance. We cannot see anything wrong with the report and as we have no alternative quote, we allow the sum claimed in full.

Rubbish Removal, Item 13

21. All that is said is that it is not payable and that they had been billed twice. The invoice is at page 1478 dated 21st February 2020. It is suggested that this has been charged twice. That suggestion has some merit. When one looks at page 1430 there is a charge for rubbish removal on 21st February 2020 of £250. On the same day is a claim for rubbish removal on 21st February 2020 in the sum of £200 plus VAT. The response given by the Respondents is that this was different waste removal. We find that surprising. If an attendance took place on the 21st February one would have thought all items would have been removed at that time. We therefore disallow the stand-alone invoice of £240.

Aluminium strip, Item 14

22. The next item is at 14, the aluminium strip where a charge of £170.40 has been levied. This can be found at page 1479 where an invoice of £170.40 is in respect of attending site, installing box section aluminium strip to prevent the door being forced. The call out is £70, labour £42 and materials £30. The suggestion is that this was something that should have been dealt with by NHBC and was under warranty. The problem here is that presumably the door needed to be fixed speedily and we are extremely doubtful that NHBC would have responded as quickly as would have been required. Whilst we may consider the NHBC point in due course, in the additional documents provided for the final hearing is an email from NHBC confirming that the warranty period for work carried out by NHBC contractors is six years. This is dated 18th August 2023 and attached to it is a schedule of work dated 22nd July 2015, which refers to the entrance door as set out at page 2443 of the bundle. It seems to us that these works were as a result of vandalism. The works that were undertaken by LMA Locksmiths were in February of 2020. As we have indicated above, we find it highly unlikely that NHBC would be able to have got the contractors back to carry out these works in a timely fashion and in those circumstances, we do not consider that the Respondent had any alternative but to proceed as they did and the costs do not seem unreasonable and are therefore allowed.

Remote Control Fobs, Item 15

23. Again, it is said that these are not payable, that the previous managing agents who apparently owe the Applicants “tens of thousands of dollars” had billed for four fobs. The response is that the fobs are required for allowing managing agents and contractors to access the building. We would have thought that the managing agents would have had fobs and therefore would not have needed to acquire any further ones. We think the most appropriate way of dealing with this is to allow the cost of two fobs, which halves the invoice to £141.

Health and Safety Fire Risk Assessment Report, Item 16

24. The fire risk assessment report is at page 1272 of the bundle and was carried out by Crescent Safety. It is said that the assessment should have included the risk posed by the dry cleaners, that Crescent Safety was only registered in May of 2020 and various other matters relating to the company which we do not consider form part of the service charge dispute. The report itself can be found at page 1274. Under the heading property description, it says in the note “this risk assessment has been confined to the communal areas of the flats only, no access was gained to the terrace on the top floor.” Accordingly, the matter solely relates to the residential, commercial parts and the relevance therefore of the dry cleaners does not seem to be a matter for us to consider. In any event the cost of £450 seems reasonable for the survey and is therefore allowed.

Fire Health and Safety Service and Repairs, Item 17

25. It is said there was a section 20 consultation but there was no long-term contract and the Applicants have not been able to disprove that. There is a string of invoices from EFP Fire & Protection starting at page 1484 and running through to page 1503. In each case there appeared to be, together with photographs, reports and inspections setting out what needs to be done following which work is undertaken and for which invoices are rendered. There is no evidence that these works were not done or that they were done in an unsatisfactory manner. There is no alternative quote provided and the history of false alarms generated by the dry cleaners does not it seems to us refer to these works, which appear to be limited to the residential element including some exterior lighting. No attempt has been made by the Applicants to obtain any form of alternative costings in respect of these. We are not prepared to accept that the invoices are fictitious and that the works were not undertaken. If the Applicants wish to challenge the number of times upon which works were conducted, then a report from an electrician might have been of assistance but no such report was placed before us. In those circumstances we allow the sums claimed and although they may seem expensive, we do not have any costs that we can compare against them. There is no doubt that fire, health and safety issues are to the fore and there can be no complaint if the Respondents have undertaken these responsibilities.

Electrical Inspection and Works, Item 18

26. The invoice for this appears at page 1540 and is from Property Run Electrical Contracting. This of course is not the same as the firefighting equipment and alarms which are dealt with by EFP. There is an obligation on the landlord to undertake electrical inspections at least in every five years but it is suggested that there was no valid electrical certificate in place and that accordingly one needed to

be undertaken under the Electrical Safety Standards in the Private Renting Sector (England) Regulations 2020. In those circumstances we are satisfied that this cost is properly allowable in full. There is no alternative quote put forward.

Item 19

27. It is an old adage so say that one is never more than six feet away from a rat. It is not possible to say that the problems with them arose solely as a result of the Respondent's alleged mismanagement of the property. It is accepted that there appeared to be difficulties with regard to the bins, which we will come onto, but not for this year. There are of course comments made about the removal of rubbish. However, this particular cost at page 1507 from First Defence Pest Control shows a charge of £192 apparently for four visits. This seems to us to be a perfectly reasonable cost and we allow it.

Door Repair, Item 20

28. This is another attendance by MLA Locksmiths, this time in July of 2020, when apparently the door had been forced forward and jammed. We cannot imagine if that were the case that NHBC would be prepared to cover the costs of what appears to be a further act of vandalism. We agree with the Respondent's comments that the property could not be left in that state and a repair under the NHBC first time round would not it seems to us have covered the case where vandalism has occurred. In those circumstances, therefore, we allow the cost of £180.

Surveyor to Advise on Cladding, Item 21

29. We have noted all that has been said by Mr Shaw in his witness statement from paragraphs 101 onwards. The invoices that we need to consider at this time are dated 31st July 2020 in the sum of £450 and a further invoice on 31st August in the sum of £90. The narrative is the same and it is unclear why there would need to be a further half hour in August. Be that as it may, the fee is not extortionate and there are no alternative quotes obtained by the Applicants. Accordingly at this stage we allow the sum of £450 as it is not unreasonable to use professionals to deal with this matter and the hourly rates are reasonable.

Door Frame Repair, Item 22

30. This is another attendance by MLA Locksmiths in August, they having visited on 21st July to carry out remedial works. The works undertaken at this stage do not seem to be the same as those which were undertaken in July, although we have commented on the NHBC involvement and if this is a continuance of the works undertaken in July to repair the damage caused, then it seems to us that this is reasonable, and we allow the sum of £190.80.

Accountant's Fees, Item 23

31. It is said by the Applicants that they failed to maintain the accounts in accordance with the lease. They cite the failure to pick up the charges for insurance and management fees and suggest that the accountants, Martin & Heller, merely add up invoices in a manner in which they are instructed, and the service is too

expensive. The invoice is dated 7th September 2020 and is for reviewing and reporting on the service charge statement for the financial year, which actually ends in September of 2020. Quite how there can be a review and reporting of the service charge before the end of the financial year is unclear. Further, we cannot see that these costs are recoverable under the terms of the lease. Under the 4th Schedule computation of service charges there is provision for matters to be referred to an independent chartered accountant (see paragraph 2.2) but at paragraph 4 it provides that a certificate is signed by the company showing the amount of the service charge and shall be conclusive save in the case of manifest error. In those circumstances we do not see that there is the entitlement to charge accountant's fees in respect of the accounts on an annual basis. In those circumstances we disallow the sum of £720.

Fees of the Previous Managing Agent, Item 24

32. These fees of the previous managing agents have been removed.

Management Fees, Item 25

33. Management fees for the period December 2019 to September 2020 in the sum of £2,916. Firstly, the management fees would not in our view require section 20 consultation for although Eagerstates are inextricably tied in with Assethold, there is no suggestion that they could not be removed and that there is some form of qualifying long term management agreement in place. We accept that the previous Tribunal may have capped the management charges at £200 per annum. There is no doubt that there are a number of issues facing the building. As can be seen from the invoices works have been undertaken by Eagerstates in connection with fire, health and safety issues, electrical inspections, repairs and other items. The previous service charges of course were rendered by a different managing agent. This is for a ten-month period meaning that each flat, if it is divided equally, pays £265 for this period. That does not seem unreasonable for the involvement that they have had. For this year, therefore, we are prepared to allow the sum claimed.

Year 2020/21

34. We turn then to the service charges for the years 2020/21 and the first one being insurance. We have already dealt with the consultation point. We do understand the Applicant's concern that in the year before the insurance premium was double the year before that and this year. The decision made by Judge Latham in his decision in 2020 of course did not have any input from the Respondents who did not attend and were not these Respondents. We have dealt with the year 2021 and made our findings. It seems to us that to carry forward that level of premium would be reasonable in the circumstances. We appreciate that the Respondents have made it difficult for the Applicants to obtain a like for like quote. However, we understand that there was some knowledge as to the problems that the property suffered from, and they would be able to have sought some quote for a mixed-use property with 11 apartments. It does not consider that the comparable evidence is sufficient to displace the premium that has actually been paid for this year in question and accordingly we allow the sum of £11,757.19.

Common Parts Cleaning, Item 26

35. This continues with the use of Doves. We consider that the findings we made in the year before still hold good for this year. We propose therefore to reduce the common parts cleaning bill by £1,000 to £3,694.

Monthly AOV and Emergency Lighting Testing, Item 4

36. The dispute here is that this was unnecessary, unreasonable and duplicate. We think it is common ground that regular testing of the fire and emergency lighting is necessary. Carrying out a six-month test seems reasonable, and we come onto this in the next heading. These works were carried out by EFP and as before there appears to be a monthly AOV and emergency lighting test for £36.96 including VAT which also provided a lightning service report. In addition, a fire alarm service report is also provided although there are not many elements that are tested. It does not seem unreasonable and there are some photographs to support. This continues with the various invoices and reports where matters are highlighted. We do not consider that a monthly test leading to a charge of £36.96 is unreasonable and would in our view be as required by fire guidance and other documents. No alternative quotes have been produced to show that this charge is excessive. There is no evidence that there is any contract that requires section 20 consultation. Accordingly, the sum of £258.72 is allowed.

Six Monthly Fire, Health & Safety Service, Item 5

37. The invoice for this for the period 22nd January 2021 is at page 1592 in the sum of £274.50. The emergency lighting service report is appended which is a detailed review and the same with the fire alarm service report where there is a far more detailed investigation into the various aspects of the alarm system. This is clearly an essential step to be taken and includes fire door service reports as well. A fire door maintenance certificate is provided, as is a service report in respect of the fire alarms together with the smoke ventilation system service report. These we accept are required in respect of properties of this nature and can find no reason to disallow the sums claimed in respect of these matters which are well documented and also supported by some photographs. The Applicants have provided no alternative costings but merely say that they are unnecessary, unreasonable and a duplicate and that the six-month test is carried out within days of the monthly test. The response is that they are different and that would certainly seem to be borne out by the sheets that accompany the invoices. The cost of £30 for a monthly inspection would not be sufficient in our finding to cover the cost of carrying out the six-monthly test and whether those were within a few days of each other it seems to us it matters not. Accordingly, we allow the sum claimed in respect of these six monthly fire, health and safety service checks they being in our view necessary for a property of this nature.

Six Monthly Drain Service, Item 6

38. The issue here is that it is said these works were not carried out on the Applicant's property. There certainly seems to be some confusion. We have noted carefully what is said by Mr Shaw in his witness statement. Nothing has been provided to us to rebut the assertion that this relates to works that were carried on the neighbouring property. Mr Harrison was not in a position to concede in respect of

these invoices. In these circumstances we think that it would be correct to disallow the sum of £408 as there is doubt that this actually relates to the works carried out on the Applicant's property and in the absence of the Respondent saying anything other than "the invoices do appear to be for this property" it seems to us that they have not discharged their responsibility and therefore this sum is disallowed.

Various drain repairs item 7

39. There are various invoices for this, which total according to the Scott Schedule £828.59. There are four invoices, the first to be found at page 1365 related to the repair of a downpipe. This appeared to be nothing more than the downpipe from the guttering, which had been broken. The allegation is made that this is a direct result of the Respondent's endemic mismanagement of the basement area. As we understand it Mr Shaw and one other has the use of the car parking, although whether they in fact use it is another matter. However, if the downpipe was struck by a car, which was entitled to use the access, then we are unclear as to how the repair could have been undertaken without the cost being borne by the lessees. It would be impossible to establish who had broken it and any claim on insurance is unlikely to be a worthwhile matter given the policy excesses that apply. In those circumstances we think that taking a pragmatic view the sum of £183.59 is payable.
40. The Applicants also challenge the levelling of the manhole cover, which they say had been fixed some 15 days before. This is unclear, as the photographs provided do not give as much assistance as might be the case. In any event, we also have an invoice from Entremark dated 2nd February 2021 which is a comprehensive invoice covering a number of matters, but which includes refit manhole cover properly. The photographs attached would appear to be the same for which Aquivo were claiming the repair costs for levelling the manhole cover. It seems to us that these works required to the manhole in such a short period of time either suggests unnecessary duplication or that one or other of the jobs was not conducted properly. The photographs attached to the Entremark invoice appear to show the manhole covers lying flush to the surface, presumably therefore had been dealt with appropriately. In those circumstances we would disallow the invoice in the sum of £390 at page 1683 and this does appear to be the duplication and disallow the sum of £102 in respect of the internal works to the flat, which looking at the door would seem to be Flat 4 and allow instead the two invoices of £183.59 and £153.00.

Waste removal item 8

41. There are two invoices in the bundle at pages 1691 and 1692. They are both within a few days of each other and are either £200 or £230. We do not understand why the waste removal would not have been dealt with in one hit. We are satisfied that this service would be covered by the terms of the lease, and we do not think that it is relevant that Be Green may not have employees as of course they could be sub-contracted. Who knows and it is not a service charge issue for us. As far as the terms of the lease are concerned, it seems to us that this would fall within clause 1.4 in the Fifth Schedule which is to keep the managed areas in good repair and condition and (where appropriate) properly lit, keeping the area clean and is in good repair and condition. We allow £230.

Surveyor to advise on external cladding & provision of EWS1 item 9

42. The invoice that is challenged is that for the further advice by the surveyor in respect of external cladding. It was suggested to us that the ESW relates to certificates for each flat. We do not understand that to be the case. We understand an ESW1 form covers the whole building and should be valid for five years. It may be that separate ESW1 certificates are required in Scotland. In this case, therefore, it seems to us there need only have been one ESW1 form and these additional costs are unreasonable and not payable. Accordingly, we disallow the sum of £387 in respect of this expense, the more so as we have already reviewed earlier costs.

Various electrical call outs item 12

43. The invoices are to be found at pages 1701, 1703 and 1706 in the bundle. They are respectively dated 17th September 2020 in the amount of £291.83, 15th February 2021 in the sum of £360 and the 19 July 2021 in the sum of £372.72. It is suggested that these are a series of invoices that would require section 20 consultation, which we reject. They are separate items of work and are well spaced. EFP appeared to deal with fire and other security matters whereas this is relating to electrical issues. Given the history of the property and its somewhat poor state, it is not surprising that these repairs are required and in the absence of any alternative quotes or any compelling reason as to why they are not payable, we find that the sum claimed of £1,024.55 is due and owing.

Downpipe repair item 13

44. The next item relates to the repair of a down pipe. It is said that this was another matter covered by NHBC. The invoice is dated 13th October 2020 in the sum of £462. It is understood there was a loose connection around Mr Shaw's property, and this was connected by leaning over the balcony and putting the parts back together again. Quite why two people were needed for this as some form of security harness would have been sufficient. The cost of £460 seems excessive even if it was working from a height. We are not helped by the fact that the Applicants have not offered any alternative figure, merely indicating that this could have been dealt with by NHBC. Whether the parties would have been prepared to have had a leaking gutter during Autumn is of course debatable. Doing the best we can we propose to halve the invoice to £235.

Installation of Emergency Lighting as per Section 20 Notice item 14

45. Section 20 notice is at page 2263 in the bundle and there is no suggestion that this was not properly dealt with. The Applicants would have had the opportunity to have put forward an alternative contractor but there is no evidence that they did so. They would also have had the statement of estimates, which are at page 2265 onwards. It seems that the lowest quote was chosen although we do understand that both Entremark and Property Run are regular contractors used by Eagerstates.
46. In the light of the consultation and the lack of issue raised at that time, it seems to us that it is difficult for the Applicants to now seek to go behind the consultation process. At page 1712 is the invoice setting out the works that were undertaken

with a breakdown of costs leading to an invoice total of £1,756.51. This is in line with the section 20 paperwork. We find that the sum claimed is reasonable and payable. However, this is only insofar as the invoice from Property Run Electrical Contracting is concerned. The invoice from Eagerstates for the administration of the section 20 paperwork seems to us to be misplaced. The sum that is quoted by Property Run Electrical Contracting would not the face of it have required consultation as it is less than £250 per lessee. The fact that they did go through the consultation process did give the opportunity for the Applicants to challenge same, which they chose not to do. However, it does seem to us that the costs charged by Eagerstates are unreasonable and should be disallowed. Therefore, we confine the allowance on this element to £1,756.51.

Key Cutting item 15

47. This is exactly the sort of element that we asked the parties to try and remove or at least agree. The indication is that there is a key cutter in the retail space at Whitecroft. It would have been easy enough for the Applicants to have found out what a cost would be. The cost involved is de minimis. If a key was required which is what is said, then it seems to us that this is an expense which can be allowed.

Fire Consultation item 17

48. It is suggested that a section 20 consultation should have taken place in respect of this matter, further that it is not recoverable under the terms of the lease and have been duplicated when the previous surveyors have been paid £907 in respect of EWS1 consultation. Further the reports were not made available to the lessees until 2022. This it is said caused problems for Mr Corr in re-mortgaging and that he was asked by Eagerstates to sign some form of document absolving Eagerstates from liability, but it appears that he did not do so. There is no statement from Mr Corr to this effect in the papers before us. Reference is also made by the Applicants to the works being unnecessary as the consultation is dated 19th January 2021 and post-dates the EWS1. We are somewhat confused by this. The report is dated 15th February 2021 at page 1212 and the EWS statements, which come before the report in the bundle, are also dated 15th February 2021. It seems to us, therefore, that the report was undertaken which enabled Part B Group Limited to sign off on the external wall fire review. In those circumstances, we do not consider firstly that consultation was required as this is not works or a long-term agreement and secondly that the report was necessary to enable the EWS certificates to be provided. We have already dealt with above as to what and cannot be charged in that regard.

Replacement of the Manhole Cover, Item 18

49. The argument here is that this is a case where Aquevo attended the neighbouring property and carried out repairs. The only response we have from the Respondent is that the manhole does serve the Property. Mr Harrison was not able to assist us in this regard. In this case we prefer the evidence of Mr Shaw and we disallow the sum of £690.

Surveyors Planned Maintenance Schedule, Item 19

50. This is to be found at page 1348 of the bundle with a date of January 2021 but in the narrative an indication that an inspection was undertaken in February 2020. The inspection in respect of the planned maintenance was carried out by Joshua Carroll and the inspection in relation to the reinstatement by Elih Harris both of JMC Surveyors and Property Consultants. The total fees charged albeit that they were spread over a year are £3,960. As the work was carried out on the same day this seems to us to be an excessive charge, although we have not really been provided with any comparable evidence by the Applicants. However, using our own knowledge and experience it seems to us that just short of £4,000 for two reports of this nature carried out by the same company where there could be some duplication for example the descriptive wording, is somewhat excessive. It seems to us there should be some allowance for the combined attendance. Doing the best we can we propose to reduce the sum of £1,620 by an arbitrary 50% to reflect what we consider would be a reasonable fee for the two reports both undertaken on the same day. We therefore allow £810 in respect of this item. We have noted the complaints by Mr Shaw, but the report is for the managing agents.

Repair of Electric Keep and Release and Installation of Broken Handle, Item 20

51. The first invoice is dated 1st February 2021 relating to a callout to attend site as the electric keep had been forced and was loose within the frame. Some nine days later it would appear the company attended again this time install a new handle as the old handle was broken. There is no indication as to why this was not dealt with on the first occasion. We note the reference to NHBC warranty but as we have indicated before, these seem to be matters of vandalism and we are unclear as to whether that would be covered by the NHBC warranty. We doubt it would be and no evidenced has been adduced to us that it would.
52. In those circumstances would allow the first invoice of £134.40 together with some additional labour and the handle charge of £62. That means that the amount claimed is allowed save for £70 being the second callout charge.

Fire Door Works, Item 21

53. This is the sum of £2,388 set out in the Entremark invoice at page 1736 which we have considered earlier when referring to the refit of the manhole cover. This is not a case for which consultation was required. It is difficult to see what was undertaken as there is no breakdown set out in the invoice. Most of it appears to be minor works. The suggestion from Mr Harrison was that these works were a collective response following the fire assessment, which was carried out some time earlier in June of 2020. We have some sympathy with the Applicants' contention that much of this work was petty and, in those circumstances, and doing the best we can we reduce the amount claimed to £1,500.

Internal Wall Intrusive Inspection, Item 22

54. The first point raised is that the professional fees are exempt. We are not convinced that an intrusive inspection of a building façade constitutes a professional fee, which is exempt. These are works. These works were undertaken at the behest of

Part B who undertook the external wall review for which they charged £3,600. In that report, which is dated 16th February 2021, they indicate that the company Build Tech Limited was required to undertake an intrusive inspection, which they did in November of 2020 at multiple locations but on one day. It is somewhat surprising that it took until 15th February 2021 for Part B to prepare their report. Nonetheless, it is clear that the two are inter-related. However, we find that the works that were undertaken by Build Tech were just that. They were required to ascertain the external building make up and understand the type of materials that had been used. Furthermore, the holes remain. We consider, therefore, that this is a case where section 20 consultation should have taken place, and we limit the costs recoverable to £2,750 as a result.

Investigation of Leaking Pipe, Item 24

55. The sum claimed is £1,499.99 and is shown in an invoice at page 1747 where narrative is given to works done at the Property by BML. We understand that the insurance for this Property includes a track and trace element. The narrative is somewhat confusing as there appears to have been a number of attendances by different people and it is unclear exactly what was actually done. Mr Harrison's response was that the invoice clearly sets out what was undertaken, and no alternative costings have been provided. Given that there should have been some insurance cover available, as we understand it from the policy, it seems to us that the first two elements should be disallowed. We therefore allow the final charge, at least in part, which together with VAT we assess at £950, which seems a reasonable amount.

Investigation and Repair of the Shutter, Item 25

56. The invoice is at page 1749 and as with the other BML ones contains some narrative. The total amount is £636. However, a closer review of the invoice indicates that the first attendance resulted in the need for a specialist to attend. The specialist then attended, and it was found that the shutter was damaged and advised that an operative attend to conduct repairs. The operative then attended and conducted the repairs. It seems to us that this could have been done in one visit and the sum of £294 including VAT is reasonable but the other two items totalling £285 we remove as there being no explanation as to why it required these three attendances. We were also asked to review alternative quotes that were obtained for the replacement of the shutters. We should also comment on the suggestion that a maintenance contract had to be entered into. We have considered paragraph 1.5 of the fifth schedule which is headed 'Purposes for which service charge to be applied'. This says: "*Keep in good repair and condition (and to enter into maintenance agreements in respect thereof) and to replace the lifts, electronic gates and all plant and machinery together with any entry phone system, alarm system, common television or radio aerial or satellite or telecommunication system (if any)*". The only other facilities serving the development. This does not seem to us to be an obligation but more an entitlement to enter into an agreement if so required. In addition, the UK roller shutters estimate is somewhat confusing as it is not quite clear what is being offered. The total cost, however, appears to be £15,658.84 but that is not clear as to what items of optional extras would be included. It does not help us. We have, however, made our finding in respect of what we consider to be recoverable on this matter.

Functioning of Water and Multiple Attempts to locate leak item 26

57. It is said by the Applicants that this should have been dealt with under the track and trace provisions in the policy and that in any event the costs associated with this work are excessive. It is said that the costs are below the excess in the premium, but we are not convinced that that would relate to track and trace issues. In any event, the main element is that this problem appeared to emanate from the restaurant and would not, therefore, be the responsibility of the Applicant. The investigations undertaken, as set out in the invoice would appear to lead to the finding that it was indeed water coming from the restaurant. This should have been pursued by Eagerstates with the owner of the Restaurant who should have been responsible for resolving this issue and not the Applicant. In those circumstances we disallow this sum in full.

Emergency Light and Replacement Works item 27

58. The suggestion by the Applicants is that these costs were a duplication and both unreasonable and unnecessary. The invoice at £673.20 is at page 1753 of the bundle and is dated 30th April 2021. It appears that it was just a report as no further action was required. The company EFP carries out monthly inspections as well as six-monthly ones and we are assuming that this invoice relates to that six-monthly inspection. It seems, however, to be on the excessive side when one looks at the earlier invoices for carrying out the same work. For example, at page 1592 is an invoice, which covers far alarm, emergency lighting, AOV and fire doors for £228.75 plus VAT. It is accepted by us that these inspections are necessary, but we do not understand why the cost has risen. In those circumstances bearing in mind the earlier costs for similar work, we propose to reduce the sum claimed to £300 plus VAT.

Fire Door Remedial Works, Item 28

59. This invoice is to be found at page 1757 and refers to a quote with the reference number being given of £638.38 plus VAT. No such quote has been supplied and it is not clear, therefore, at what remedial works were undertaken. The response by the Respondents in the Scott Schedule is unhelpful. Unfortunately, this mirrors a number of responses and on this occasion in the absence of the quote to justify these works, we disallow the sum of £776.06.

Emergency Replacement of Stack Pipe, Item 29

60. The invoice for this is to be found at page 1759. The first charge of £60 indicates that the plumber attended but access was not allowed, although no explanation is given, and given the fact that the Respondents have charged for fobs and keys it seems surprising that a regular contractor such as BML would not have been able to gain access.
61. The next element for which £495 is claimed is in respect of two plumbers attending and inspecting the pipework, which resulted in them being unable to see where the leak was emanating from. The Respondent says there was a active leak. That does not seem to be borne out by the tradesmen who attended. In the circumstances it

seems to us that this cost did nothing for the Applicants and we therefore disallow the sum claimed in full.

Installation of Working Stopping Bolts to Shutter, Item 30

62. The invoice in this regard is at page 1761. It appears not for the first time that the operative attended, did not have the necessary wherewithal to obtain access but nonetheless a charge of £200 was made. As we indicated above, it seems to us that as regular contractors that they should have been able to have dealt with this matter. We therefore disallow the charge of £200 but do accept the charge of £200 for actually carrying out the works. Accordingly, the sum of £200 plus VAT is allowed.

Repair to Front Door and Redecorating, Item 31

62. This is the continuing saga of the front door. On this occasion it is M2M who attended to carry out works to prevent water ingress and decoration. The photographs attached to the invoice do little to persuade us that this was a neat piece of work. There is a plaster patch where we assume the door handle had been hitting and the work generally seems to be somewhat shoddy. In the circumstances we would allow 50% of this cost giving an amount of £525.

Replacement of all Lights in Car Park, Item 32

63. The works seem to arise from an emergency lighting report by EFP on 21st July 2021 at page 1581 onwards in the bundle. That indicates a cost of £881.63 excluding VAT. The works were in fact carried out by Property Run Contracts. Their price was as shown on the invoice at page 1765 plus some parking at £904.18 plus VAT. The works that they have undertaken are consistent with that which is on the EPC report.
64. Mr Harrison did not think there was any merit in this claim and indeed it seems that Mr Shaw's view was that had this information been available to him at the outset it was not an issue that would have been raised with us.
65. The costs seem to have been the subject of some form of tendering albeit informal and we are satisfied that the works were required and appear to have been properly carried out.

Installation of Metal Sheet, Item 33

66. The cost of this £150 and the invoice is shown at page 1770 in the sum of £150 by M2M Management. The photograph attached to it shows what appears to be a metal plate fixed by six screws in the position that we referred to previously showing where the wall had been hit by the door handle. This seems an excessive charge and is something that should have been undertaken at the first time when works were carried out to the door. In the circumstances it seems to us that this is unreasonable, and we therefore disallow the amount claimed in full. It should be noted this is referred to in Mr Shaw's witness statement at page 287 onwards.

Supply and Installation of New Inertia Safety Break items 34/35/37

67. We will also, however, deal with items 35 and 37. The reason for doing this is that the invoices are from BML and start at page 1772, all dated 17th August 2021 and all relating to works in connection with what appear to be the shutter to the car parking area. We have already dealt with the Applicant's argument that a maintenance contract was required and their suggestion that there should have been a complete replacement. We consider this to be one contract.
68. In his submission to us Mr Harrison said that whilst he accepted that these works did relate to the shutters, but no alternative quotes had been provided.
69. Putting aside the question of the cost for the fobs it seems to us that the three invoices, which we consider, are all inter-related, came to a total of £5,759.40. Under their response the Applicants raised the question that these were subject to section 20 consultation, which is ignored by the Respondent. It admits that this is one item of repair but merely says it is not clear what the argument is by the Applicant. The arguments are clearly set out. We agree with the Applicant. We find this to be one set of works for which consultation should have taken place. In those circumstances we limit the Applicant's liability in respect of these matters to £250. Insofar as the fobs are concerned, those are an expense that will have to be borne and we allow the sum of £120 in respect of item 36. Our findings in respect of the works to the door cover items 34, 35 and 37.

Supply and Fitting of Drip Tray, Item 38

70. This is to be found at page 1776 of the bundle. This shows a charge of £420 for attending on the basis of measurements given by a tenant which proved to be incorrect and to then re-attend to supply and fit a drip tray, although it does not say what part of the building this was fitted to. It appears that it relates to the shop and indeed that is accepted by the Respondents. The response by Mr Harrison was that this relates to the structure and exterior to the building to which the shop pays a service charge. There is little information of any assistance in respect of the invoice and the Respondents do nothing to assist in their reply in the Scott Schedule. It certainly seems to us that the charge of £420 should be disallowed, as surely the contractors should have been the party who carried out the measurements. There is no indication in the invoice as to the cost of the drip tray and the split between labour and materials. We find this expense difficult to reconcile and, in those circumstances, and given the lack of information provided by the Respondent we disallow the charge shown on this invoice of £2,004. It also seems to us that there is no evidence that this is a requirement of the leaseholders.

Accountant's Fees, Item 39

71. As we said previously, we are unconvinced that the lease allows the recovery of this fee having regard to the terms of the service charge, although we accept there is an ability to claim for the cost of an audit, this does not seem to have been undertaken and in those circumstances to be consistent we disallow the sum of £780.

Management Fees, Item 40

72. It is clear from the documentation that a good deal of management has taken place although it is suggested by the Applicants that this was not competent and not of a professional standard. Doing the best we can it seems to us appropriate to allow the amount that we agreed previously at £265 per property for a ten month period. Accordingly, a charge of £318 per flat would seem to be appropriate and we so find.

Disputed Service Charges for the Year 2021/2022

Insurance

73. The policy is at page 1779 showing a premium of £17,742.31. This continues to have the policy excess of £10,000 in respect of the escape of water. In his witness statement Mr Shaw devotes some time to this claim, indeed from page 230 through to 235. The quote that had been obtained by Mr Corr is, as we have already stated, not of help to us, as we understood was accepted. We do note, however, the great fluctuations in the insurance premiums. That being said, there was inevitably an increase in premiums, which have been suffered by any person who insures, although there is no explanation why it should have increased by some £6,000. The Respondents produced no evidence as to the review of the insurance market. In the decision of the Tribunal at page 337 of the bundle at paragraph 54, the Tribunal then indicated that they were satisfied that the current premium was not unreasonable given the past history of the block and reduced because of that failing. Of course, this is something that has been “inherited” by Assethold. There is no compelling comparable evidence or evidence to support the contentions raised by Mr Shaw in his witness statement as to the swings in the premium charged. What we do have is a premium from a respectable insurer and in those circumstances, we do not think we really can do anything other than to allow the sum of £17,792.31 in respect of this insurance.
74. This took us to the end of the first two days of the hearing in June.
75. The matter reconvened on the 4 September and it was at this point we were presented with an 80 plus page statement prepared by Cheyenne Kiernan, Mr Shaw’s wife. Mr Harrison objected to this going in, not only because it went over material that we had already dealt with but seemed to go back to square one and was late. Mr Shaw’s submission was that he was asked to assist, and this somehow did that. There is no doubt that Ms Kiernan has spent a great deal of time on the statement. It is detailed and goes into matters that are contained in Mr Shaw’s lengthy witness statement. We will therefore deal with the items set out in the year 2021 and 22 based on the Scott Schedule and Mr Shaw’s witness statement.

Common parts cleaning item 3

76. There are a number of invoices, some by Doves and some by Block Cleaning who appear to have replaced Doves as the cleaners. The question of section 20 is again raised but does not seem to us to be of any merit. We have invoices running from page 1795 through to 1799 in respect of Doves attendances and from 1800 to 1805 in respect of Block Cleaning. There is a complaint that Doves were removed, and it was unilaterally decided to use Block Cleaning. That is of course a management

function. What we do not understand and what is not explained by the Respondents is that for Block Cleaning their charges seem to fluctuate without any apparent explanation from £486 inclusive of VAT to £810 inclusive of VAT for a month's cleaning. It seems to us that if this is standard cleaning then there ought to be a standard charge. No specification has been provided by the Respondents and in the absence of any explanation as to why these charges fluctuate, it seems to us that they should not exceed that which was charged by Doves, which was £301.27 per fortnight plus some minor extras. That of course does not reflect the allegations that the work undertaken by Doves was sub-standard. In addition, it is alleged that the sign-in sheet only shows an attendance for half an hour. However, our experience of sign-in sheets is that they are not always dealt with correctly. It is, however, very difficult to deal with this when there is so little evidence on either side. We think the best we can do is to follow what we did for the earlier years and reduce the sum by £1000 when one considers the alternative quotes that the Applicants have obtained and the invoices before us.

Fire, Health and Safety Testing & Services item 4

77. There are a number of invoices starting at page 1806 and running through to 1923.
78. Dealing with those invoices, page 1806 is in the sum of £135.60 and relates to the attendance to deal with an AOV, which was open and needed to be resolved. This seems to be reasonable, and we allow that sum. The next invoice is in the sum of £135.60 and relates to a report from a resident that an alarm box appeared to be beeping. It appears some work was carried out on the smoke detector on the fifth floor, and this gives rise to the charge, which we consider to be reasonable and payable. We then have two invoices at pages 1812 and 1815. Both appear to relate to attendances because of fire alarm issues, one on 18th October and one on 19th October. It seems to us that to claim for both is unreasonable. In the circumstances we disallow the charge of £321.49 in invoice 1812 as these post-date the attendance on 18th October when there appeared to be similar problems and perhaps should have been dealt with properly at that time. The other invoices relate to monthly testing, which we find is perfectly reasonable and payable, as well as six monthly testing with works arising as a result of those inspections. Those we find are reasonable and are payable. We have no reason to suspect that the invoices are fictitious or that the work was unreasonable. We do accept from the Applicant's point of view that there appeared to be a log of attendances and a lot of work that is required. However, it seems to us essential that these items are dealt with appropriately and speedily and there is nothing to indicate to us that these costs are unreasonable, save only for the invoice that we have disallowed of £321.49. The balance is due and payable.

Bin hire item 5

79. The next charge is the bin hire from Newham – at page 1924 this represents two refuse bins in the total of £924. The bin problem exercised the Applicants, and we understand that it would do so. We find it somewhat surprising, however, that Mr Shaw's assertion is that the bins were left outside for 48 hours and this resulted in them being lost, taken in error, or stolen. This invoice in question

appears to be from Newham in connection with the hire of two bins presumably for 12 months. It is difficult to see how this could be challenged and in those circumstances, we allow the sum of £924 for this element.

Bin cleaning item 6

80. Mr Shaw dealt with this at page 254 onwards of his witness statement. It is not thought that photographs would ordinarily be taken of the cleaning. The cleaning of the bins seems to be undertaken by BML. The invoices starting at page 1925 refer to the disinfectant and deodorising washing inside and out of seven bins at £20 a bin. We accept Mr Shaw's evidence that the Property has four bins. That would give a charge of £80 plus VAT of £16. However, at invoice number 1931, which is in May of 2022, this charge has dropped to £18 per bin. If £18 per bin can be charged then, it seems that that is the reasonable charge that should have been throughout the period. There are four bins as we accept Mr Shaw's evidence, which gives a monthly charge of £86.40 which we allow.

Drain service and repairs item 7

81. There are two invoices for this, one at page 1933, which has a full narrative and is in the sum of £690. The invoice also has supporting photographs. The next invoice is £114 on the same day apparently indicating some form of planned programmed maintenance. There appeared to be two "Look-Sees" by CCTV and we do not understand why there would need to be this additional charge, which we therefore disallow. The sum of £690 is allowed.

Remainder of lift works and consultancy item 8

82. The challenge here appears to be to Eagerstates claim for their involvement. We understand that the Eagerstate charge was £17,224.70. This is not consistent with the notice of intention and the estimate document dated 13th April 2021 where a management fee of £7,305.55 is quoted. It seems that this cost should be limited to this amount, and we allow the sum of £7,305.55 in respect of Eagerstates charges. We do not understand the other charges relating to the lift to be in dispute.

Carpet cleaning item 9

83. the costs associated with the carpet cleaning appear to be £1,092 with two invoices, one from Doves for £312 and other from Block Cleaning for a substantially greater amount of £780. It is not clear why there should be this difference. We understand that there was some suggestion that there was an offer to carry out a clean, but the Respondents indicate that that was dealt with the previous year. It seems to us, and we so find, that if the carpet could be cleaned for £312 on 1st December 2021 there is no reason why it would rise to £650 plus VAT on 30th March 2022. We therefore allow two charges of £312 in respect of the carpet cleaning.

Multiple waste removal visits item 10

84. The first invoice we are referred to is at page 1958 in the sum of £1,200 from M2M. There are photographs attached which would appear to indicate that a lot

of the rubbish in the car parking area is of building material and not domestic waste. The charge appears to be £400 per trip although on the next invoice at page 1961 this is reduced to £385. Be Green Disposal Limited then gets involved and at page 1963 is a invoice for removing rubbish it would appear from the apartments for £108. There are further photographs to support this. There is a further invoice from Block Cleaning Limited dated 28th February 2022 in the sum of £482.40 for what appears to be three visits in January. Following on from that there appeared to be a further three visits in February at a similar charge and a further rubbish clearance invoice on 29th April for works in March of £626.40. The final invoice in connection with the removal of rubbish is from BML dated 4th November 2021 where a charge of £595 has been claimed plus VAT. Mr Shaw addresses this at page 255 of his witness statement. Again, it is suggested that this is a result of “endemic gross mismanagement by the Respondent.” The works are a duplicate and the rates are inconsistent. Some research appears to have been undertaken to find out the costs of a man plus van and a complaint that in some cases no photographs are included. Of course, there are some in respect of some of the visits.

85. There is no evidence put before us that the Respondents allowed this dumping. They hired companies to remove, and the photographs do appear to indicate that there is waste around certainly the car parking area. However, the number of visits seems to us to support the Applicant’s contention that the removal of waste from the Property was as a result of the lack of bins and poor management.
86. Doing the best we can, it seems to us that there are some costs that are properly chargeable. We propose, therefore, to allow the sum of £2,000 in respect of this element.

Call out for entrance door item 11

87. This is a somewhat repetitive complaint by the Applicants. We believe we have already made the Tribunal’s position clear on the NHBC point. The first invoice from MLA Locksmiths is in the sum of £84, which has a narrative confirming the steps that were taken and thereafter there is an invoice, which is dated 24th November 2021 attending to lock and release which had been forced open. There is no indication as to what had caused this other than poor use by presumably residents. We see no reason not to allow the sum claimed of £218.40.

Multiple call outs for lights and sensors item 12

88. These invoices start at page 1972 and are by Property Run Contracts, which fully set out what was undertaken. Invoice at page 1972 for example appears to be proactive. There are some photographs, but we can see nothing on the face of these invoices that means they are not payable. There is photographic evidence to support some of the works that have been carried out and if there is some form of inherent defect with regard to the lighting, then it does not prevent this having to be attended to. As with most of these items where there is this challenge to a bulk of invoices, the Applicants have provided no expert evidence from electricians etc to explain why these costs may have arisen and whether the costs are reasonably recoverable as a service charge. It is accepted that there are a lot of call outs. But the invoices seem to be bona fide, and we are certainly not

prepared to accept that they are fictitious. Maybe it is time for the Applicants to retain their own electrical expert who can give them a thorough review of the lighting systems. It seems to us that these invoices reflect work that was carried and was deemed to be necessary. We would just mention page 1993 the invoice on 8th April 2022 where it was suggested by Mr Shaw that all they had done was flip a switch on the fuse box. The invoice indicates that more than this was done and accordingly supports our view that these costs are reasonable and are payable in the sum claimed of £2,773.91.

Call outs, repairs and replacement parts to the shutters item 13

89. There are a number of invoices for this starting at page 1996 from BML in the sum of £636 apparently for attending to investigate and resolve. It does not say what works were undertaken. This dated 6th November 2021. There is then an attendance on 13th January 2022 to carry out necessary works to ensure that the shutters were operating appropriately at a charge of £2,820. A photograph of the shutters is attached. There is then a further invoice dated 8th February 2022 to replace a shutter motor as quoted and to install a tower for access and remove together with replacement of a motor. This is in the sum of £1,620 and on the 14 March 2022 there is a further charge of £1,752 to replace the right hand garage shutter again as quoted. There then seems to be an invoice for carrying out a biannual service, which was a complaint levied by Mr Shaw that no such service agreement was in place. That is in August of 2022. A further invoice, which is in November of 2021, is to supply and programme two remotes for the large shutter.
90. There appears to be some duplication. Going through the invoices we find at page 1996 a call out which appeared to result in an attendance to investigate and resolve but we have no idea from the invoice what work was actually done. We therefore disallow that sum of £636. The next invoice relates to necessary works to ensure the shutters operated and to current safety standards for £2,820. However, this should be contrasted with the invoice at page 1775 where there was also an attendance to bring the shutters up to the required risk assessment of £3,066. We do not understand why there is these works that appear to be duplicate within such a short period of time and accordingly we disallow the late one of £2,820. The next invoice at page 1999 is for £1,620 to replace a motor. It is said by Mr Shaw that no tower was ever erected but we are not quite sure on what basis he says that and in the absence of any compelling evidence to the contrary this invoice is allowed at £1,620. The next invoice is for £1,752 to replace a shutter curtain as quoted. No quote is given. However, this should be compared with what appears to be works to replace the perforated curtain where a charge of £1,740 was made and it is unclear from the invoice which curtain we are asked to consider. It seems to us the onus rests with the Respondent to tell us what this work was, and we do not have the benefit of any photographs which were provided with this later invoice. It also seems strange that the survey was carried out in January to ascertain whether current safety standards were met but it was not until March that the garage shutter was replaced, and no mention is made of that in the invoice in January of 2022. We therefore disallow that invoice at page 2000 in the sum of £1752 as we are not satisfied as to the works that were carried out and it would have been easy enough for the Respondents to have provided more information in this regard.

91. The next invoice relates to the biannual service which came as something of a surprise to the Applicants who complained that there was no service agreement. However, we are told that there are only three shutters at the Property, not four, and that accordingly the sum involved should be reduced to £887 to reflect this. The last invoice in relation to the shutters is dated 4th November 2021 for the supply and programme of two remotes for the larger shutters at a total price of £222. We have contrasted this with the invoice at page 1774, which is dated 17th August 2021, where two remotes were provided for the entry shutters at £50 each. We do not know why two further ones were required and certainly not at the price that is sought by the invoice at page 2005. In the absence of any explanation, we disallow this invoice. We calculate therefore that the amount allowed in respect of item 13 is £2,507.

Repair to car park fire door item 14

92. This should be read in conjunction with items 15 and 16. There are in total five invoices, three are on the same date and have sequential invoice numbers totalling £3,875 and two are at a later date in October, again with sequential invoicing totalling £2,500. These works should be looked at in the light of the Entremark invoice at page 1736. This is dated 2nd February 2021 and includes amongst other things fitting new smoke seals to both electrical cupboards and repairing the door to the car park so that it opened and closed properly.
93. Although these appear to be separate issues on the various invoices in front of us, we are concerned that this is one item of work which has been subdivided to avoid section 20 consultation. If one considers the five invoices that make up this charge of £6,375 it is obvious that the first three are all dated 6th September 2021 and have consecutive invoice numbers ending 1776. There are then two invoices again with consecutive numbers on the 6th September but dated 3rd October for the total £2,500. We have also reviewed the Entremark invoice at page 1736 and there does indeed appear to be some duplication in regard to works to the car park door and fitting new smoke seals to the electrical cupboards. This is in February of 2021. The photographs which accompany the invoices produced for the works on 6th September 2021 are hardly compelling evidence that these works were undertaken to a high standard. There are no alternative quotes. However, it seems to us that this was an attempt to try and avoid section 20 consultation by breaking these various costs down into separate elements. Three of them appear to be works carried out on the same day and the two also show the works as the 6th September, although the invoice dates are later. They relate to ground floor works and there is undoubtedly some evidence that these works or part of them were carried out earlier. In those circumstances we think the best way of dealing with this is to conclude that the total costs were subject to section 20 consultation and that the Applicant's liability is limited to £250 in respect of the total of these costs which was £6,375.

Repair to drainage covers and bases item 17 and 18.

94. The first invoice is in the sum of £1,920, which is dated 2nd October 2021 and has some accompanying photographs, which appear to show a cracked manhole cover. This appears to be repeated on the 12th October and there is no

accompanying photograph. The works appear to be identical and in those circumstances, we disallow one of them whether that be item 17 or 18. The sum payable is limited to £1,920, which even that seems expensive but there are no alternative quotes provided.

Installation of dedicated SWA feed item 19

95. The next item of expenditure is an invoice dated 15th October 2021 at page 2020 from Property Run Contracts in the sum of £1,068. The narrative shows the works that were undertaken, and consultation would not have been required. We are not clear how this is not covered by the lease. In the circumstances and in the absence of any alternative quotes or explanations, it seems to us that this invoice is bona fide, and the costs are allowed.

Repair to internal water damage item 20

96. The challenge is essentially that the costs are excessive for the work that was undertaken. We have noted what has been said about the application to strike off M2M but there is no indication that this in fact was proceeded with. The photographs do not really assist. It is unclear as to what damage was actually occasioned and what steps were taken to repair. It is of limited decorative involvement it would seem and the sum of £800 does seem an excessive cost, although again we have no alternative quotes. We have also reviewed the witness statement of Mr Shaw and some emails. It seems to be the case that the reason the AOV was left open was because of another contractor. We prefer the evidence of the Applicants on this one as in truth the Respondent has not addressed the concerns raised. In those circumstances the sum of £800 is disallowed.

Repairs to holes and dents on first floor and repainting item 21

97. The first complaint is that the costs are excessive and that the works were not as extensive as was suggested. The photographs appear to show that some work is being undertaken but it is difficult to tell the extent of same and that there has been some filling. The costs are not insignificant but in the absence of any alternative quote we feel obliged to allow same. We note the comment that a return two weeks later to repair a bigger hole gave a much lower cost. However, as we understand it, this includes some additional repainting of all walls on the first-floor landing and would therefore be perhaps more extensive.

Mice treatment item 22.

98. The comments we made about the question of rats seems to us apply in this case. The attendance is not confined to mice but to rats as well and the charge of £180 inclusive of VAT does not seem excessive and is allowed.

Replacement of light sensors item 23

99. This work would not require consultation. It is said that they are unnecessary and not workman-like. However, as we have indicated previously, the Applicants have produced no expert evidence to show that these works were not required. The invoices from Property Run do contain a narrative explaining what they have

done and the materials that they have provided. They are also accompanied by photographs. We are not prepared to accept that this is fictitious, and the work seems to be of a reasonable standard. Again, no alternatives are provided and accordingly we allow the sum of £1,288.68.

Supply of doorstoppers item 24.

100. The invoice at page 2036 appears to be for the supply and fit of doorstoppers of one in quantity, redecorating and internal front door and resealing exposed gaps to the front door. The photographs of the doorstoppers are unhelpful, and it is not clear whether these are duplicated. Some are different to others and indeed in one photograph at page 2038 the end appears to be missing. Giving the Respondent the benefit of doubt on this occasion, it seems that there may have been six doorstoppers fitted. There has already been a good deal of work to the front door, and it would seem to us that the £50 charge is perhaps irrecoverable. We allow the sum of £330 in respect of this invoice.

Repair to holes in wall item 25.

101. The comments made by the Applicant are noted but it would appear from the photograph that there was more than one hole which was filled, one looking to be quite extensive. In the circumstances, we consider that the charge of £350 is reasonable and payable.

Specific rendering. Item 26

102. Here the evidence of Mr Shaw is of interest. He indicates at page 288 and 289 that he had contact with the person carrying out the works (the singular) and that this was done in one day. In addition, it seems that there was no specific render but just paint was applied to cover what appears to be some form of graffiti. This statement was not challenged and we accept the evidence of Mr Shaw as to what went on, the number of people who attended and the length of time it took to deal with the work. In those circumstances we allow the sum of £400 for the attendance of one person and the paint necessary to complete the job.

Intercom call-out item 28.

103. The invoice from Protect is dated 5th May 2022 and refers to an access control and the change of lock at £180. This appeared to be in fact a change of the code because in the following pages at 2054 reference is made to the code being 2018 and changing it to 7319. There is no explanation as to why this work was undertaken. In those circumstances we do not consider the cost to be reasonable and the sum of £180 is therefore disallowed.

Clearance of gutter item 29

104. The invoice is in the sum of £1,362 and again it is said there should be consultation but that is not the case. Consultation as we have made clear before is for works that exceed £250 per flat and this is a long way short of that amount. Attached to the invoice are a number of photographs showing an operative using some form of abseiling equipment to deal with the cleaning. The abseiling

appears to be coming from the top of the building and works are done at height. Certainly, the photographs would appear to suggest that this is more than work that could be carried out from a ladder. In the absence of any alternative quotes and having regard to the invoice and the photographic evidence available, we conclude that this cost is payable and allow the sum of £1,362.

Supply and installation of FIKE smoke detectors item 30

105. In the invoice from ADL Fire and Security it shows supply of three smoke detectors at a cost of £120, each following a report confirming the replacement of same and a call out report and some accompanying photographs. We do not really understand the objections. It may be that fire alarms were installed some two years or so before but there is no indication that the invoice is fictitious. These works appear to arise from a fire alarm service report from EFP on 22nd June 2022 when it indicates that there are three multi-point smoke alarms that are not working and that they should be replaced. The price quoted is £351.68. The difference between that and the ADL costs is minimal, and we consider it good practice to make use of other contractors on occasions. The sum is therefore allowed.

Replacement of fluorescent bulkheads item 31

106. This invoice is to be found at page 2066 from Superior Facilities Maintenance in which a cost of £252 inclusive of VAT is raised for a 28watt fluorescent bulkhead which was replaced as set out on that invoice. There are photographs that accompany it. It may well be that this cost is on the high side. Again, there is no evidence from the Applicants that the work was unnecessary, although it is suggested that this had been dealt with previously but it is again not clear that Property Run made the full replacement that was required here. It is possible that there could have been cheaper materials but in the absence of any compelling alternative quotes we allow the sum of £252.

Reprogramming of remote item 32 .

107. This is an invoice from BML dated 8th May 2022 in the sum of £1,188. This indicates an attendance at 9.00 on the 8th April 2022 to delete the existing remotes and re-programme. The visit was apparently abandoned as a resident walked off site. We do not quite see why that means the work had to be abandoned. There was then a further attendance on 14th April when another charge of £495 was claimed. There is no indication given by the Respondent in the Scott Schedule as to why this work was required. It is assumed it may relate in fact to the shutters to the car park. That being the case, the point made by Mr Shaw in the statement that in November 2021 they carried out this work for £220 seems reasonable. In the lack of any proper explanation from the Respondents we disallow the sum of £1,188.

Fire, Health and Safety risk assessment item 33

108. The fire risk assessment, which the Applicants say they have not seen, is in the bundle at page 1239 and is dated 4th July 2022. It refers to a review being required in July of 2023. There was a fire risk assessment conducted by Crescent Safety, which is dated 4th June 2020 and appears at page 272 in the bundle. The

survey that is the subject of this complaint is fulsome. We have noted also the guide that was provided at page 783 in the bundle which at 40.6 indicates that there should be a review every two years for lower risk lower rise blocks and for blocks with a higher risk and in this case there does seem to be some indication that there are electrical and fire and health and safety issues, an annual review might be appropriate with a fire risk assessment every three years. This fire risk assessment is two years after the previous one. The assessment is in the bundle and presumably has been provided. In those circumstances we find this a reasonable cost and allow same.

Securing of fire door item 34

109. This is referred to in the earlier fire, health and safety risk assessment. The invoice at page 2070 sets out what was done and there is a photograph showing a fire door 'keep shut' sign which has four screws inserted. We are told that the sum of £60 is a call out charge. We can understand that might be the case, although it seems a pity that may be some other arrangement could have been put in place to insert what appeared to be two extra screws. Be that as it may, there is no alternative quote and we therefore allow the sum of £72.

Various remedial works item 35

110. The invoice for the various remedial works is at page 2072 with a narrative justifying a charge of £1,758 plus VAT which conveniently comes to a total charge of £1,750. At item 10 there appears to be the filling of holes and gaps to the ceiling in the ground floor car park. This we understood had been dealt with earlier. The fire door to the courtyard and the ground floor car park had also been the subject additional works. The ground floor corridor worn carpet is also a duplication of works. We are not satisfied that this is a bona fide invoice. The works that are set out appear to have been done previously and in those circumstances, we disallow the sum of £1,750.

Fire door inspection item 37.

111. The invoice for this is at page 2082 by MLA Locksmiths in the sum of £660. It appears to be an onsite inspection carried out on 17th August 2022 and requiring labels to be fixed to the fire doors, which carry unique reference numbers to enable those to be matched to the inspection report, which was attached. That report is not available to us. These works seem to emanate from the London Fire Prevention Report. In the bundle at page 1160 appears to be a fire door survey carried out on 10th October 2022 when there are a number of matters indicating that doors failed to meet the required standard. In those circumstances doing the best that we can it seems to us that this inspection was required and was flagged up in reports available to Eagerstates and accordingly this cost of £660 is allowed.

Accountants fees item 38.

112. As we have found previously it does not seem to us the lease enables the recovery of the fee for reviewing and reporting on the service charge statement and accordingly the sum of £810 is disallowed.

Management fees item 39

113. Insofar as the management fees are concerned, whilst there may have been shortcomings work has no doubt been undertaken and we conclude that a charge of £318 per flat is a reasonable sum.
114. Estimated charges for 2022/2023 were not pursued at this hearing by the Applicants.
115. There some housekeeping matters that we should address at this stage. In the schedules at each year reference is made to non-compliance with the Applicant's leases in respect of the demands for service charges. We were provided with a copy of the lease, which is dated 5th August 2013 between Whitecross JS Limited (1) and Mr Shaw Limited (2). The lease is for a term of 125 years starting on 11th September 2012. Mr Shaw pays 8.727% of the service charges. Under the lessees covenants the lessee agrees to pay a proportion of the estimated service charges in advance on a quarterly basis.
116. In the 4th Schedule the computation of the service charge is set out. This provides for the estimated service charge to be computed no later than the beginning of December immediately preceding the commencement of the maintenance year and in accordance with paragraph 2 which sets out how that estimated service charge is to be computed. It includes an amount for reserve. In addition also, sums are to remunerate the company or agents employed by it. At paragraph 3.1 it says "*After the end of each maintenance year, the company shall determine the service charge adjustment which shall be the amount (if any) by which the estimate under paragraph 2 above shall have fallen short of the actual service charge*". At 3.2 *The lessee shall on demand pay the proportion of the service charge adjustment*. The schedule then goes on to provide that the certificate shall be signed by the company and shall be conclusive evidence of the amount save in the case of manifest error. From what we can see in the bundle the service charge accounts and budgets appear to be in accordance with the terms of the lease and contain the necessary summary of the tenant's rights and obligations. There are statements of account in respect of each year and whilst it may not always be clear what credits and debits have been dealt with nonetheless, they appear and if there are issues in respect thereof maybe an accounting exercise is required. We do deprecate the Respondent's suggestion that it is down to the Applicants to work out their own accounts. This is not appropriate and the Respondents when they have digested the results of our findings are required to produce up to date statement of accounts for each of the Applicants so that they know exactly where they stand.
117. The other matter we should address is Miss Al-Sudani's statement and exhibits. This in essence is confined to accounting exercises and what she considers to be the errors made. It is not clear whether the Respondents have ever taken this on board. However, given our warning to the Respondents and Eagerstates and their requirement to provide proper statements of account, we hope that they will review Miss Sudani's witness statement and perhaps work with her to agree accounts in respect of this Property.

118. We understand that each leaseholder pays 8.727% of the service charge, the balance being payable by the commercial premises. That percentage should be applied to the sums where we have made deductions.
119. The last matters that we will address are the submissions made to us by the parties on the afternoon of the last day. We were urged by Mr Shaw to read his wife's witness statement. This could not be challenged by Mr Harrison as it arrived late, there was no permission for the production of such a statement and that it dealt with matters that were now several years old. He said he would respond in the form of submissions. We noted all that Mr Shaw had to say. With respect to him nothing was new and repeated that which was out in his witness statements and the numerous emails that had been passed. We noted his concerns about the lack of information provided by the Respondents to enable an alternative quote to be obtained, but we hope that we have dealt with the insurance position satisfactorily, the more so as Judge Latham in his decision appeared to consider that a premium of £12,000 given the state of the Property, was perhaps not too unreasonable. Comments were made concerning the Respondent's failure to follow the terms of the lease in respect of accounting matters and that they'd never served any documentation in relation to Flat 6. On that point we are assuming that the service charges are the same for the tenant of that property, Mr Dhingra. There was a challenge also to the basis upon which the estimates were provided and were unreasonable. However, in this case we now have the actual sums to deal with. We were referred to the problems that the residents had encountered with regard to the lift and note the length of time it has taken for that to be completed.
120. Mr Harrison responded to these matters. He dealt firstly with NHBC policy confirming that these provided cover for a six-year period it would seem to August of 2023. There was, however, no guarantee for wear and tear particularly our attention was drawn to a letter from NHBC of 18th August 2023 to Mr Shaw which it says "*I can confirm that any works carried out by contractors that have received an instruction from NHBC are covered for six years. During this six years if any issues are to arise with the works carried out, we would ask our contractors to return and remedy the issue if their repairs have failed.*" There was a schedule of works attached dated 22nd July 2015 and we assume the six-year period would run from then.
121. He touched briefly on the allegations made concerning the relationships of various companies, but we cannot take that any further. Insofar as the insurance was concerned, he said that if there was a breach of the lease, that was a County Court matter but in the event no loss had been suffered as this was all historic. He reminded us that in his view the balancing charges had been satisfactorily dealt with by Eagerstates and that the allegation that the previous freeholder's costs had not been resolved was not borne out by the documentation. Any changes to the maintenance for the calendar year had now been in place for some time and had been followed by the tenants. If there were an objection, they would need to give the Respondents time to change under the estoppel by convention rules.

122. Insofar as the lack of involvement of Flat 6 was concerned, he accepted that our decision would be the same for that flat owner as everybody else. We noted the rest of his submissions.
123. There was a short response from Mr Shaw and ultimately a request that we exercise our discretion in respect of the section 20C order, the more so as he said the Respondents had not engaged and should not be rewarded for that position.
124. In response Mr Harrison pointed out that virtually every invoice had been challenged with allegations made that they were fake or that unnecessary work had been duplicated. The Applicant's approach he said was an all or nothing basis. He also pointed out that the Applicant Mr Shaw and his wife were lawyers and that accordingly they should have been aware of the statute insofar as it related to this matter, particularly in respect of the obligations under section 20.
125. That concluded the submissions that we received. We accept that a good deal of time and effort has been put into this by Mr Shaw and Ms Kiernan. One only has to look at the number of pages that were included in the final bundle and the extensive reviews carried out. We hope that our findings may enable there to be some form of rapprochement between the parties. If not, the Applicants are aware of their entitlements, indeed indicated that at one stage they wanted us to deal with an appointment of a manager application at the same time. However, if that is something they wish to pursue, they will have to do so by way of separate application.

Judge: Andrew Dutton
A A Dutton

Date: 9 January 2024

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.