FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AJ/LSC/2023/0393**
Property	**:**	**12 Grange Park, London W5 3PL**
Applicants	**:**	**Edward Jackson (Flat F1), Viktor Gyebrovszky (Flat F2), Ran Wei (Flat F3), Paul Havel (Flat G1), Michael Shilliday and Ayesha Jameel (Flat G2) and Amy Underwood (Flat S1)**
Representative	**:**	**Gregsons Solicitors up until hearing but then Michael Shilliday (joint leaseholder of Flat G2) representing Applicants at hearing**
Respondent	**:**	**Assethold Limited**
Type of Application	**:**	**For a service charge determination pursuant to Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge P Korn** **Mr J Naylor FRICS FIRPM**
Date of hearing	**:**	**30 July 2024**
Date of Decision	**:**	**21 August 2024**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decisions of the tribunal

(1) The following table sets out in relation to each item of challenge in each year (a) how much the Applicants state was charged and (b) the amount that the tribunal determines is payable:

SERVICE CHARGE ITEM	SERVICE CHARGE YEAR	AMOUNT CHARGED	AMOUNT PAYABLE
Cleaning	2020/21	£1,382.40	£720.00
Cleaning	2021/22	£1,467.10	£720.00
Cleaning	2022/23	£1,295.45	£600.00
Window cleaning	2022/23	£312.00	£0
Bin cleaning	2021/22	£256.80	£120.00
Bin cleaning	2022/23	£360.96	£120.00
Pathway inspection, etc	2021/22	£1,494.00	£120.00
Chimney works	2021/22	£2,537.00	£0
Cutting branches	2021/22	£65.00	£0
Gardening	2020/21	£2,286.50	£1,000.00
Gardening	2021/22	£2,808.20	£1,000.00
Gardening	2022/23	£1,413.90	£833.33
BML drain works + management fee	2021/22	£2,493.58	£0
Fire assessment	2021/22	£417.60	£417.60
PPM Schedule	2021/22	£1,170.00	£1,170.00
Carpet cleaning	2020/21	£144.00	£144.00

S/C ITEM (continued)	S/C YEAR (continued)	AMOUNT CHARGED (continued)	AMOUNT PAYABLE (continued)
Carpet cleaning	2021/22	£144.00	£144.00
Carpet cleaning	2022/23	£156.00	£156.00
Boundary wall works + management fee	2022/23	£990.00 + £300.00	£495.00
Fire door inspections	2022/23	£719.97	£342.85
Fire alarm testing	2020/21	£252.92	£212.88
Fire alarm testing	2021/22	£942.24	£809.52
Fire alarm testing	2022/23	£1,056.00	£1,056.00
Wooden door works	2022/23	£500.00	£250.00
Building insurance	2020/21	£3,430.00	£3,430.00
Building insurance	2021/22	£3,545.95 + £574.69	£3,545.95 + £574.69
Building insurance	2022/23	£6,226.07	£4,980.86
Electrical works	2022/23	£4,357.58	£3,487.34
Management fees	2020/21	£2,049.60	£819.84
Management fees	2021/22	£2,074.80	£829.92
Management fees	2022/23	£2,091.60 + £348.60 + £840.00	£697.20

S/C ITEM (continued)	S/C YEAR (continued)	AMOUNT CHARGED (continued)	AMOUNT PAYABLE (continued)
Accountancy fees	2020/21	£750.00	£400.00
Accountancy fees	2021/22	£780.00	£400.00
Accountancy fees	2022/23	£780.00 + £120.00	£400.00
Common parts electricity	2022/23	£331.98 + £27.08	£228.08

(2) The Applicants' application for a cost order under section 20C of the Landlord and Tenant Act 1985 is granted in full and therefore none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Introduction

1. The Applicants seek a service charge determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**").

2. The Property is an Edwardian townhouse converted into 7 flats. The Respondent is the freeholder of the Property, and the Applicants are between them 6 of the 7 leaseholders.

3. The Applicants challenge various service charges for the years 2020/21 to 2022/23 inclusive. The service charge year runs from 25 March to 24 March. The leaseholders obtained the right to manage ("**RTM**") on 19 January 2023.

Barring of Respondent from proceedings

4. For reasons that are a matter of record, having failed to comply with an 'Unless' Order issued by the tribunal the Respondent was barred from any further participation in these proceedings as of 25 April 2024.

The Applicants' submissions and the tribunal's analysis

General point re demands

5. In their statement of case the Applicants appear to argue that the service charge demands served on them by or on behalf of the Respondent did not comply with the lease terms and were therefore invalid. However, at the hearing Mr Shilliday said that the Applicants were not in fact seeking to argue this as a general point.

Cleaning

6. In his witness statement Mr Shilliday states that prior to 2020 communal parts cleaning was done on a monthly basis. After 2020 the managing agent instructed the cleaning company to clean the Property on a fortnightly basis, but cleaning at the Property merely involves vacuuming the hallways, stairs and the three small landings on each floor and the Applicants do not consider it necessary for the communal parts to be cleaned more than once a month.

7. The cleaning cost was £92.08 plus VAT in April 2020 and by the year end in 2022 it had increased to £105.40 plus VAT. The Applicants consider this charge to be unreasonable, especially as the cleaners would attend for no more than 10-15 minutes. Since the leaseholders obtained the RTM, Ms Amy Underwood (one of the leaseholders) now cleans the communal parts, and it takes her no longer than 10 to 15 minutes to vacuum and dust the whole of the communal areas. The Applicants believe that a reasonable cost would be £50 plus VAT per month.

8. In addition to the general cleaning costs, the relevant invoices disclose additional costs. For example, £5.00 was charged for 'COVID-19 disinfecting of touch points in communal areas with specialist product' in the months of March, April, May, June, July, August, September, October, November and December 2021 as well as January and February 2022. This charge was in the Applicants' view unnecessary and simply a way of bumping up the invoices. Also, in the Doves invoice of February 2022, leaseholders were charged an additional £8.00 for changing a lightbulb, and the Applicants believe this also to be unreasonable. They were also charged an additional £5.50 for 'Applying of WD40 onto front door hinges and locks' in March, June, September and December 2021 as well as February 2022, and yet since obtaining RTM they have not yet needed to apply any lubricant to their doors. Also, in December 2022 they were charged an extra £15.00 for sweeping leaves and yet were also charged separately for gardening services in the same month. Any clearing of leaves would have been part of the gardening service and should not be subject to any additional charge for cleaning.

9. The tribunal considers the Applicants' evidence on cleaning to be credible and there is no alternative evidence from the Respondent. We therefore accept (a) that a reasonable cost would be £50 plus VAT (£60) per month and (b) that the Applicants should not have been charged for the last two months of the 2022/23 year once the RTM was in place. Therefore, the amount payable is £60 x 12 in 2020/21 and 2021/22 and £60 x 10 in 2022/23.

Window cleaning

10. Mr Shilliday states that there is no provision in the lease requiring the landlord to clean the windows and entitling it to charge the cost to the leaseholders. Whilst there was no charge for window cleaning in the years 2020/21 or 2021/2022, in 2022/2023 leaseholders were charged £312.00. Three invoices have been disclosed, being charges by Gresham Group which total £312.00. The narrative in the first invoice for £102.00 dated 17 August 2022 states 'Window Cleaning – 02/08/2022 – Call out fee – Tenants refused to allow us to carry out job'. A second invoice for £102.00 dated 10 November 2022 reads 'Window Cleaning – 04/11/22 – All Front Windows on this property were cleaned'. The third invoice for £108.00 is dated 6 February 2023, 18 days after the leaseholders obtained RTM, and is in respect of window cleaning which did not take place. The Applicants do not consider it reasonable to be charged £102.00 for a call out fee and then to be charged the same amount when some cleaning actually took place. Additionally, the second and third invoices are two months apart. Finally, the third invoice is not recoverable by the Respondent in the Applicants' view because it was after they had acquired the RTM.

11. The tribunal agrees with the Applicants that there is no provision in their leases allowing the landlord to recover the cost of window cleaning and therefore these charges are not payable at all.

Bin cleaning

12. Mr Shilliday states that leaseholders were charged £256.80 in 2021/22 and £360.96 in 2022/23 for bin cleaning. The disclosed invoices from BML Group Ltd ("**BML**") show that in 2021/22 leaseholders were charged for bin cleaning nearly every month, but the Applicants can see no justification for such frequency of bin cleaning. In previous years the bins were cleaned once a year which the Applicants felt was reasonable. Mr Shilliday emailed Mr Gurvits on 29 June 2022 querying this and providing alternative quotations from other contractors. Also, leaseholders were charged an extra £10.00 each month for the cleaning of brown bins, but Ealing Council does not provide brown bins to its residents.

13. The Applicants have included in their bundle photographs taken in June 2021 after the Respondent had allegedly had the bins jet washed,

disinfected and deodorised, and Mr Shilliday comments that if there had been any cleaning it was to an extremely poor standard. The Applicants propose that a reasonable charge would be £50.00 plus VAT in each of 2021/2022 and 2022/23 on the basis of one clean per year.

14. Mr Shilliday further comments that in a conversation between the Applicants' solicitor and Barry Lobenstein, a director of BML, on 4 December 2023 the solicitor asked Mr Lobenstein what his business relationship was with Eagerstates, noting that the contact email at BML was eagerstates@bmlgroup.co.uk. Mr Lobenstein told her that he was required to pay Eagerstates a "kick back" equivalent to 10% of all invoices rendered by BML to Eagerstates in respect of goods supplied and services rendered and that he was asked to increase his invoiced costs over and above BML's normal charges, presumably in order to increase the amount of the "kick back". The Applicants have included in their bundle a follow-up email which Mr Lobenstein sent to the Applicants' solicitor (copied to Eagerstates) in which the conversation was confirmed although not the details of it. Mr Gurvits has never denied the relationship and financial structuring.

15. The tribunal notes that clause 4(1) of the lease includes a landlord's covenant (in respect of which the tenant must pay a service charge) *"to keep … the dustbin area … in good and substantial repair and clean and proper order and condition"* and we consider this on balance to be sufficient to enable the landlord to recover the cost of bin cleaning, albeit that there is no reference to the bins themselves. However, we accept the Applicants' point regarding how often it is reasonable to clean bins and how much such a service should cost, and therefore we agree that the charge should be reduced to £50 + VAT per clean in each of 2021/2022 and 2022/23. That said, whilst there is no absolute correct answer on this point we consider that a landlord could justify cleaning the bins twice a year, and therefore a reasonable charge would be £100 + VAT (£120) per year.

<u>Pathway inspection, etc 2021/22</u>

16. Mr Shilliday states that leaseholders were charged £1,494.00 for the 'inspection of all pathways and ground for trip hazards', '[raking out] of degraded joints and re-pointed with a suitable compound' and 'removal of moss and vegetation to repair any trip hazards', the invoice coming from BML. Minimal work was done, but due to the cost the Respondent was obliged to conduct a section 20 consultation. The Respondent's failed to follow the section 20 consultation process, and therefore the charge to each leaseholder must be capped at £250.00 maximum. That aside, very little work was done and in his view it should not have incurred a cost of more than £100 plus VAT. He watched the contractor slap a bit of concrete onto a paving stone, and that was all he did. The paving stones around that one still move, as they have since he moved in. The Applicants believe that this is an

example of BML's financial arrangement with Eagerstates inflating the cost.

17. The tribunal considers the Applicants' factual evidence on this issue, together with supporting photographic evidence, to be credible. In the absence of any evidence to counter their narrative, the tribunal accepts that very little work was done and that such work as was done was carried out in a sub-standard manner. We therefore agree that the value of this work to leaseholders was nominal and that £100 + VAT (£120) would be a reasonable charge for that work.

Chimney Works

18. Mr Shilliday states that on or around 30 July 2021, the Applicants received a section 20 Notice of Intention to carry out work to the chimneys. The letter stated that the works required included cleaning the chimneys and clay pots, localised repairs to the mortars, hacking away flaunching and renewing, ensuring flashings are securely fixed and repointed, and repairing localised damage and spalled brickwork. The invoice for these works is in the sum of £2,150.00. In the service charge accounts for 2021/22 leaseholders were charged £2,537.00, including a management fee.

19. The Applicants deny that these works ever took place. Leaseholders obtained a drone survey of the chimneys in January 2023, and the images produced clearly show that no work was undertaken to the chimneys. As can be seen from the photographs in the bundle, the chimneys are clearly still cracked and damaged and there is still considerable moss on the roof. Furthermore, these works would have required scaffolding and there was none. In conclusion they contend that nothing is payable.

20. The tribunal considers the Applicants' denial that any works took place to be credible, having seen their written submissions and heard from Mr Shilliday, and there is no evidence from the Respondent to counter the Applicants' narrative. In the circumstances, nothing is payable.

Cutting back of branches

21. Leaseholders were charged £65.00 in February 2022 with the invoice stating, "branches overarching the path into the garden should be cut back." The invoice did not say that the work was undertaken, rather that it should be undertaken. The closest tree to the wall in question is many metres away and there were no branches overarching the path. The Applicants deny that this work ever took place, and there was certainly no evidence of any branches having been cut back. Mr Shilliday emailed Mr Gurvits on 29 June 2022 asking him to provide evidence of branches being cut but he did not receive any reply.

22. The tribunal notes the Applicants' evidence. On the one hand, we do not accept that their lay opinion as to whether the work needed doing is more persuasive than that of a relevant professional. However, their view that the work did not take place is credible, and in any event the work could have been done by the gardener as part of his normal duties and does not justify an additional charge. In the circumstances, nothing is payable.

Gardener

23. Mr Shilliday states that leaseholders were charged £2,286.50 in 2020/2021, £2,808.20 in 2021/2022 and £1,413.90 in 2022/2023 and the work was done to a very poor standard throughout that time. As can be seen from the bundle, in January 2020 Paul Havel emailed Mr Gurvits complaining of the garden being messy and unkept. Mr Gurvits wrote to Doves who responded profusely apologising, and Mr Gurvits told the leaseholders that this was Doves 'final warning'. Notwithstanding this, the gardener ruined the flower beds in the garden, and the Applicants have included before and after images of this in the bundle.

24. Mr Shilliday adds that the same person who cleaned the communal areas of the building tended to the garden, and he was clearly untrained for the task. The leaseholders asked the Respondent to change the gardener and even said that they would be willing to pay a higher amount to ensure that the garden was properly maintained, but the Respondent did not reply to this request. It is difficult for the Applicants to suggest a reasonable sum for the work done, given that it was done so badly, but on reflection they say that the work resulted in no service or benefit to them and they should not be required to pay anything at all.

25. The tribunal has considered the Applicants' written evidence (including copy photographs) and oral evidence. On the basis of that evidence, which has not been countered by the Respondent, we consider (a) that the charges are too high even for a competent gardening service and (b) that the gardening service was sub-standard and was provided by someone who had insufficient expertise. We do not, though, accept, that the evidence shows the work done to have resulted in no benefit at all. Whilst necessarily this is not a scientific process, we consider that £150 per month and £1,800 per year would be a reasonable charge for a competent gardening service and that this should be reduced to £1,000 per year to reflect the poor quality of the service. In 2022/23 this should be reduced further by two-twelfths to £833.33 to reflect the fact that for the two months at the end of that service charge year the RTM was already in place and therefore no gardening service should have been provided by the Respondent.

BML drain works plus management fee

26. Mr Shilliday states that in February 2021 the Applicants received a section 20 notice informing them that drainage repair works were required. The notice stated that the Respondent would remove a step covering a manhole cover by means of a hydraulic lifter, carry out high pressure water jetting and install a new step and manhole cover. These works were said to be required further to a recent drainage report, although the Applicants have not been provided with a copy of the report and therefore do not know what justification was offered. Also, the contractor was not the usual drainage firm, Aquevo, but BML. Their invoice is dated 26 August 2021, and the Applicants believe that the work was entirely unnecessary.

27. Mr Shilliday adds that leaseholders were charged for the step being broken and replaced when in reality there was no step broken or replaced. Instead, an unbroken but loose step was moved out of the way and then replaced, that step simply comprising unsecured paving slabs as shown in the photograph in the hearing bundle. Also, there are two manhole covers very close together; one of them was taken up and replaced with a new one but there was nothing wrong with the old one. When this work was being undertaken, Mr Shilliday approached the workmen and asked them what the purpose of this work was, but they were unable to provide him with any explanation. The Applicants submit that the tribunal should disallow all of this cost and the associated management fee.

28. The tribunal considers the Applicants' factual evidence to be credible and it has not been countered by the Respondent. We therefore accept that nothing of value took place and that therefore the Applicants should not have been charged anything. In the circumstances, nothing is payable.

Gutter cleaning

29. Mr Shilliday states that the gutters had been neglected by the Respondent for a very long time and were in a dire state and overflowing, as can be seen from the relevant photo in the bundle which was taken on 9 August 2021. Eventually the Applicants instructed a contractor at their own expense to clean the gutters. Amy Underwood later mentioned that she had been told by that contractor that in his opinion the gutters had not been cleaned in over a decade.

30. The Respondent has disclosed an invoice dated 1 December 2021 which showed a charge of £108.00 for gutter cleaning, but the Applicants are certain the gutters were not cleaned at that time. Mr Shilliday emailed Mr Gurvits asking him for a date and time as to when the gutters were cleaned so that he could check with the CCTV cameras but he did not

receive a response. The Applicants' conclusion is that the invoice for £108.00 is not payable.

31. The tribunal considers the Applicants' evidence, including the photograph and oral submissions, to be credible and their evidence has not been countered by the Respondent. We note that when challenged Mr Gurvits was unable to supply any details regarding the alleged gutter cleaning and we accept that it did not take place. Therefore, nothing is payable.

Fire health and safety risk assessment

32. Mr Shilliday states that leaseholders were charged £417.60 in March 2022 for a Fire Health and Safety Risk Assessment. That assessment sets out a number of actions which the managing agent was required to take, including informing the leaseholders of their obligations and responsibilities to ensure safety and prevention of fire. Some of the actions were listed as high priority, but none of the information was provided top the Applicants. Whilst the Applicants do not object to the cost of the report itself, they do feel that as a result of this management failing there should be a reduction in the management fee.

33. The tribunal notes that whilst this cost is presented as being disputed, the Applicants state that they do not object to the cost of the report itself and instead feel that as a result of the management failing described above there should be a reduction in the management fee. The Applicants do not challenge the cost or the quality of the report, and therefore there is no basis for reducing or extinguishing this charge and it is payable in full.

PPM Schedule

34. Mr Shilliday states that in or around May 2021 the managing agent instructed JMC Chartered Surveyors & Property Consultants ("**JMC**") to conduct a pre-planned maintenance schedule. Leaseholders were charged a total of £1,170.00 by invoice dated 14 May 2021. First of all, in the Applicants' submission a competent professional managing agent should be able to prepare such a document, which is a standard template, as part of their duties and there ought to be no need for professional assistance or additional cost. The document is a statement of the obvious with no items which required professional input. Secondly, JMC are based in Manchester and would have had to travel to London, a round trip of 4 to 5 hours plus the cost of travel. Thirdly, the author of the PPM Schedule, Mr Joshua Carroll, is not a surveyor. For these reasons the Applicants do not believe the cost to be reasonable and consider that they should not be required to pay it.

35. The tribunal notes the Applicants' comments, but they have no expertise in this area and such a schedule requires more skill and more time than the Applicants are suggesting. The fact that JMC are based in Manchester could have been a relevant factor if their need to travel had led to an unreasonably high charge, but on the basis of the information before us we consider the charge to be a reasonable one and there is no evidence before us that Mr Carroll did a poor job. Therefore, this charge is payable in full.

Professional carpet cleaning

36. Mr Shilliday states that there is an invoice for £144.00 in 2021/22 and two for £144.00 and £156.00 in 2022/23. The Applicants do not believe that any carpet cleaning ever took place as none of the leaseholders has ever seen Doves clean the carpet and nor has there been any other evidence of carpet cleaning. Had the carpets been cleaned, one of the Applicants would have noticed because the carpets take some time to dry and would be noticeably cleaner afterwards, whereas the carpets were always dirty.

37. In relation to this specific issue, the tribunal is not persuaded by the Applicants' evidence. We completely accept that it has been given in good faith, but we do not accept that the evidence before us demonstrates that no carpet cleaning ever took place. Occupiers of flats cannot possibly know at all times what is happening in the common parts, we are not persuaded that the Applicants could be satisfied that no carpet cleaning ever took place, and the amounts charged are relatively modest. Therefore, these sums are payable in full.

Boundary wall works plus management fee

38. Mr Shilliday states that in the service charge accounts for 2022/23 there is a charge of £1,290.00 for works related to the boundary wall. The Applicants deny that the work ever took place. The cost comprises £990.00 for the contractor, the balance being a management fee for Eagerstates.

39. The invoice from Superior Facilities Maintenance states that the 'boundary wall [was] topped with coping stone', 'timber fence panels and posts located to the left boundary line and side gate to the right elevation', and 'clean down of brick walls and timber fence panels of all moss, staining and vegetation growth using an appropriate cleaning solution', 'undertake localised repairs to the mortar by way of raking out and repointing any defective joints', 'defective cracked/spalled brickwork to be removed and replaced with new to match existing' and 'undertake localised repairs/replacement of any damaged fence panels. There are plants on the wall which have always been there and it has never been cleaned. Mr Shilliday has a CCTV camera installed facing the wall, and so if a contractor had attended to do works to it he would

have known. The vegetation is still on the wall and the wall still has a lean, and he is confident that no work was done.

40. When Mr Shilliday asked the Respondent about this matter in his email of 20 September 2023, he was merely told that "the invoices were sent with the final account". In any event this was not true in his submission, and it was only on disclosure during these proceedings that the Applicants had sight of the invoices. The administration fee charged by Eagerstates of £300.00 is for section 20 works, but there was no section 20 consultation and none was required.

41. The evidence before the tribunal indicates that Eagerstates charged a £300.00 management fee for a non-existent section 20 consultation and therefore this fee is not payable. As regards the remainder of the fee totalling £990.00, there is an invoice and there is some evidence that work was done. However, based on the evidence before us we consider the work to be incomplete and to be sub-standard in places, and therefore a reasonable fee would be 50%, i.e. £495.00.

Fire door inspections

42. Mr Shilliday states that the account prepared on handover provides details of fire door inspection costs of £719.97, but the Applicants have been unable to see from the invoices where that figure comes from. The invoices for fire door inspections total £1,026.69. The difference is the final two invoices which they think have probably been included in either Fire Health and Safety Testing etc or in Fire Health and Safety Services items. Mr Shilliday then does on to list the various invoices that have been disclosed.

43. He adds that an inspector from Security Masters attended on two dates and that on the first they were charged £282.85 for the three doors which were inspected and a total of £377.12 for those which were not. They were not notified of the fire inspector's intended visit, and in Mr Shilliday's submission to attend unannounced in the middle of the working day and then to charge for not inspecting is plainly unreasonable. He also notes that in May 2022 there was a further visit to inspect a single door at a cost of £60.00 and then a further visit to inspect to inspect a single door in July 2022 at a further cost of £126.72 and yet another inspection in December 2022. The doors not inspected on 22 March or 12 May were never inspected so far as the Applicants are aware and the one communal fire door was inspected multiple times.

44. Based on the evidence before it, the tribunal accepts that it was unreasonable to charge for non-inspection in circumstances where leaseholders were not notified of the fire inspector's intended visit and the fire inspector then attended unannounced in the middle of the working day. Therefore, the sum of £377.12 is not recoverable. As

regards the other costs that have been challenged, the service charge does not appear to include these charges and therefore this item should just be reduced by £377.12 from £719.97 to £342.85.

Testing of fire alarm and smoke detectors

45. Mr Shilliday states that the Respondent engaged the services of EFP to do monthly emergency lighting and fire alarm checks. However, based on the testing reports, he states that it is clear that in most months only the emergency lights were tested and not the fire alarm system. In 2020/21 the service charge for this item was £252.92 but only four invoices have been disclosed totalling £212.88, which is an overcharge of £40.04. Also, there could not be any need for a monthly inspection two days after the six monthly one in January 2021 and the test reports show that the fire alarm was not tested at all. The Applicants submit that they should only be required to pay the £102.00 for the six-monthly inspection and two charges of £36.98 which totals £175.92.

46. In the year 2021/22 the Applicants were charged £942.24. The invoices are from EFP for monthly testing and they total £377.52. The six-monthly test invoices are each for £216 so making a total overall of £809.52 not £942.24, an overcharge of £132.72. Furthermore, there was not a single month where all the devices were tested. There are also two invoices from ESP for six-monthly testing, each for £216.00, one in August 2021 and the second in January 2022. In the Applicants' view there was no need for monthly testing in those months and so they believe that a reduction of 2 x £36.96 should be made. Also, EFP did the six-monthly test in the year which followed at a cost of only £126.72. The Applicants submit that the service charge should be reduced to reflect the total of the invoices disclosed and the lack of testing, and the August and January invoices should not be payable at all. In addition, the two ESP invoices should be reduced to £126.72 from £216 as EFP should have been instructed to deal with the six-monthly test at a more cost effective charge.

47. Mr Shilliday adds that in relation to the period from the start of 2022/23 to handover, the Martin Heller account has a figure of £768.00 but that may include some element of fire door inspection costs. There was then added a further £288.00 in the handover demand received from Eagerstates, making a total charge of £1,056.00. The invoices for monthly testing are from EFP and cover the months April 2022 to August 2022. They are each for £44.88 plus a second invoice in July 2022 for a six-monthly test for £126.72 and they total £351.12. There are then three invoices from JHB Fire Services for monthly testing covering the months November and December 2022 and January 2023, each for £48.00. Adding £144.00 to £351.12 makes £495.12. There are then two further invoices from ESP for six-monthly testing, one in July 2022 (so duplicating the EFP six month test in the same month) and the second on 6 January 2023. The first invoice is for

£216.00 (reflecting the charge made previously) but the second is for £336.00 just before the leaseholders acquired the RTM. The testing reports do show that testing was carried out more thoroughly by EFP but in the Applicants' submission there was no need to do a monthly test in July 2022. The Applicants argue that they have clearly been overcharged for six-monthly testing, the invoice from EFP in July 2022 being proof of that, and they submit that the total they should have been charged for monthly and six monthly testing is 10 x £44.88 and 2 x £126.72 making a total of £702.24 and not £1,056.00.

48. At the hearing Mr Shilliday questioned why it was appropriate for a firm to come all the way from Ipswich to test monthly.

49. The tribunal accepts the accounting points made by the Applicants and accordingly the charges should be reduced to reflect these accounting errors. Regarding the point about monthly and six-monthly inspections, the Applicants suggest that a monthly inspection was not necessary when a six-monthly inspection was also taking place, but the six-monthly inspection performs a different function and therefore we do not accept this point. The remainder of the Applicants' evidence on this issue is a little unclear and/or unpersuasive in our view and we do not agree that it shows that the charges should be reduced further. Therefore, the charges should only be reduced to reflect the accounting errors by £40.04 in 2020/21 and by £132.72 in 2021/22.

Wooden door works

50. Mr Shilliday states that in the service charge accounts for 2022/23 leaseholders were charged £500.00 for 'Wooden Door works to comply with legislation.' The invoice to support this cost is from a company called Superior Facilities Maintenance Ltd, is dated 19 July 2022 and relates to a door to the electrical cupboard. It refers to work needing to be done, not work actually done. The Applicants have examined the cupboard concerned and state that there is no evidence at all of any work having been done to it. They have included a photograph in the bundle.

51. Based on the evidence before it, the tribunal's view is that the photograph shows that some work was done and that it matches the description on the invoice. However, we do not accept that as much as £500.00 worth of work was done and we consider that £250.00 would be a reasonable charge for the work actually done.

Insurance

52. The Applicants dispute insurance costs for 2020/2021, 2021/2022 and 2022/2023. The premiums payable included a broker's fee of £50 and the charges were £3,431.00 (for 2020/21), £3,545.95 plus £574.69 (for

2021/22), and £6,226.07 (for 2022/23). As regards the claims history, there was one claim for an escape of water in the basement. The additional £574.69 for 2021/22 relates to an insurance revaluation in December 2021 to £1.9m.

53. The Applicants concede that they would expect the insurance to go up year on year, but a jump from £4,120.64 to £6,226.07 is felt to require explanation. The Respondent was ordered to disclose the claims history but did not do so and it has not therefore been possible for the Applicants to check the premiums with a broker. The Applicants know that the Respondent owns a huge number of properties and submits that it would have been able to obtain a significant portfolio discount and would also have received a very substantial commission. The broker's fee is said to be included in the premiums and appears to be £50, which in their submission cannot be all that they were paid. In the circumstances the Applicants invite the tribunal to apply a broad-brush approach and reduce the premiums by 20%. This is partly in light of the Respondent's failure to provide information about commissions and about whether the insurance is part of a block portfolio arrangement with its insurers as it was ordered to do.

54. The tribunal is unclear whether the Applicants are seeking a reduction in every year and, if so, on what basis. The premium for 2020/21 is not obviously out of line with the market, and the Applicants' evidence does not demonstrate any particular issue with that premium. In relation to 2021/22, it is right for landlords to commission periodic insurance valuations at suitable intervals and there is no evidence before us to demonstrate that the new valuation was too high or that the additional premium to reflect the significant increase in valuation is not justified.

55. The position in 2022/23, though, is different. The premium for that year represents a sharp rise from the previous year, the Applicants asked the Respondent legitimate questions and sought relevant documentation from the Respondent in order to test the reasonableness of the premium and to obtain like-for-like quotations. In response the record shows that the Respondent was very obstructive and offered no proper evidence of its own to support the level of premium. And whilst it is true that the Respondent was barred from providing evidence as from 25 April 2024, the barring order was entirely self-inflicted as it resulted from the Respondent's refusal to co-operate with these proceedings. The Applicants have proposed a reduction of 20% in the premium for 2022/23, and in the circumstances we accept that such a reduction would be reasonable. Therefore, the premium for 2022/23 is reduced by 20% to £4,980.86.

Electrical works and reports

56. Mr Shilliday states that there is one landlord electricity supply and that the Property requires minimal emergency lighting, yet over the period

April 2022 to January 2023 leaseholders have been charged costs of nearly £4,357.58. In April 2022 they were charged £408.00 for replacement of a RCD module which they understand to be a safety device. On 27 May 2022 they were charged £420.14 for the extension of cabling to add an emergency light. Then on 13 September 2022 they were charged £298.80 for a visual installation condition report which stated that the installation was in good condition but that some remedial actions were required including work relating to an incorrect RCD and a recommendation to install additional emergency lighting at the bottom of the stairs and to upgrade existing emergency lighting. But leaseholders had already been charged for additional emergency lighting and to replace the RCD module. Ten days later on 23 September 2022 the contractor charged another £612.00 for installation of emergency lighting and then on 13 October 2022 leaseholders were charged another £998.40 for replacement of the RCD and installation of a surge protection device.

57. The Applicants submit that it cannot be reasonable for them to be charged for work to be re-done or duplicated or to be charged for emergency lighting on two occasions, and they submit that the invoices dated April and May 2022 should be reduced to zero.

58. Mr Shilliday states that having incurred all of the above costs, the Respondent then asked BNO London to carry out a standard audit. This, in the Applicants' contention, could be no more than a check up on what the original contractor had done and advised previously. Leaseholders had already been charged £298.80 for an inspection by the original contractor and Mr Shilliday states that there is so little electrical equipment he does not believe that even if the Respondent could justify a second inspection the cost could be the £1,488.00 that was charged. The Applicants believe that they should not have to pay any of this cost. Finally, there is a second BNO invoice for £132.24, but it postdates the RTM handover and is therefore not payable.

59. The tribunal notes that the Applicants are not experts in this area, and in our view they have been unable to demonstrate that these items were unnecessary and/or are duplications. However, we agree based on the tribunal's own expert knowledge and in the absence of any submissions from the Respondent that the audit fee is unreasonably high for what it is. A more reasonable audit fee would be £750.00 rather than £1,488.00. We also agree that the Applicants should not have to pay the second BNO invoice for £132.24 as it postdates the RTM handover. Therefore, the overall charge is reduced from £4,357.58 to £3,487.34.

Management fees

60. Mr Shilliday states that leaseholders were charged £2049.60 in 2020/21, £2,074.80 in 2021/2022 and £2,091.60 plus £348.60 plus £840 (for handover) in 2022/2023, in respect of management fees. He

states that it will be apparent to the tribunal from the evidence on individual service charge items how poor the management was on a routine basis. He adds that Eagerstates are almost impossible to engage with in a meaningful way, they resist any suggestions which might prove more economical, they stick with their preferred contractors who clearly and self-evidently overcharge on a routine basis, and their "arrangement" with BML Group Limited may well be replicated with other contractors. Financial enquiries are responded to, but the responses only add to the confusion. As a supposedly professional managing agent, they should provide clear financial explanations but do not do so. In light of the exceptionally poor service received, the failure to comply with lease provisions and other factors, the Applicants invite the Tribunal to make a substantial reduction to the management charges. In addition, leaseholders have been charged for works which were not done, and once the RTM application was made service charges were piled on with little care or consideration for what was reasonable. There was no attempt to comply with the RICS Code.

61. Taking the above points together, the Applicants submit that management fees should be substantially reduced. They also ask the tribunal to consider the connected relationship between the Respondent and its managing agent and the financial arrangement that Eagerstates has or had with BML and possibly other contractors and the discount and commissions that it has avoided disclosing in respect of insurance. Mr Shilliday has also given examples where in his submission the managing agent has made demands for payment which do not comply with the lease provisions.

62. Mr Shilliday adds that the SRA website shows Mr Gurvits to be a practising solicitor and that the Applicants would therefore expect him to be aware of the Respondent's legal obligations and to comply with them. He also states that after the RTM was obtained leaseholders were charged much higher fees for that final 10 months when the service was at its worst and that there was no handover and the requirements of the legislation were completely ignored.

63. First of all, the tribunal accepts that the Applicants have given credible evidence that the Respondent's managing agents provided leaseholders with no information or support in connection with handover, and therefore we are satisfied that Eagerstates' fees in connection with handover are not payable. Secondly, the Applicants have provided a wealth of evidence to demonstrate that Eagerstates' management has been extremely poor and unprofessional throughout the period to which these proceedings relate. The evidence indicates that Eagerstates were actively obstructive when asked perfectly reasonable questions by leaseholders, and there is some evidence to suggest that Eagerstates' management model involves protecting its and the Respondent's commercial interests at the expense of providing a good and cost-effective service to leaseholders.

64. Whilst it has to be conceded that Eagerstates has provided a basic – albeit deeply flawed – management service, there needs to be a substantial reduction in the management fee in each year to reflect Eagerstates' extremely low standards and the very real effect that this has had on leaseholders. In the circumstances, we consider that the management fee should be reduced by 60% in each full year (2020/21 and 2021/22) and should be reduced by 60% for 2022/23 (after removing the handover charges) and then further reduced in 2022/23 by two-twelfths to reflect the fact that the handover to the RTM came after 10 months of that year and therefore there was only 10 months' worth of management. Accordingly, the management fee for 2020/21 is reduced to £819.84, the management fee for 2021/22 is reduced to £829.92 and the management fee for 2022/23 is reduced to £697.20.

Accountancy

65. Mr Shilliday states that leaseholders were charged £750.00 in 2021/22 and £780.00 in 2022/23 for accounting services provided by Martin Heller. In Mr Shilliday's submission, the accounts (save for those dated 28 February 2023) show no sign of being anywhere near an accountant and they are no more than a list of expenses certified by Eagerstates. He adds that they are riddled with errors and clearly have had no scrutiny. Furthermore, they do not comply with the lease terms. The final handover accounts were apparently prepared by Martin Heller but they too have errors and so did not receive the scrutiny that a fee of £780.00 plus £120.00 (charged by Eagerstates) might justify. Additionally, these accounts are not compliant with TECH03/11 Residential Service Charge Accounts guidance nor with the RICS Code of Practice. Mr Shilliday adds that Martin Heller shares an address with the Respondent.

66. The tribunal notes that Eagerstates charged an extra £120.00 in connection with the handover accounts, but again the evidence before us indicates that Eagerstates did not do anything in connection with handover and therefore this sum is not payable. As for the accounts themselves, we agree that they contain significant errors and there are compliance issues, but the accounts do still have some value. Taking a necessarily broad-brush approach, we consider that a reasonable charge in each year would be £400.00.

Common parts electricity for 2022/23

67. Mr Shilliday states that leaseholders were correctly charged £160.30 in 2020/21, correctly charged £118.60 in 2021/2022 but charged £331.98 in 2022/2023 plus a further £27.08. The invoices disclosed for that final period add up to £228.08, and so there was an overcharge of £130.98. An invoice has been included which does not relate to the Property at all, further evidencing the lack of scrutiny in accounting. As they were not provided with handover accounts until September 2023

there should have been plenty of time to ensure that all costs were accounted for.

68. On the basis of the evidence before it the tribunal accepts that accounting errors have been made and accordingly that the charge for the 2022/23 year should be reduced to £228.08.

Cost application

69. The Applicants have applied for a cost order under section 20C of the 1985 Act ("**Section 20C**"). The relevant parts of Section 20C read as follows:- *(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".*

70. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be added to the service charge.

71. The Applicants have been very successful in their main application, and the Respondent has failed to co-operate with the Applicants or the tribunal in these proceedings such that it was barred from taking any further part in the proceedings as from 25 April 2024. In the circumstances it is entirely appropriate to make a Section 20C to the effect that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Name: Judge P Korn **Date:** 21 August 2024

RIGHTS OF APPEAL

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

B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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

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

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

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

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

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

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

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

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