FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BF/LUS/2023/0004**
Property	**:**	**Flats 1, 2, 3 and 4, 14 St James Road, Sutton, Surrey SM1 2TP**
Applicant	**:**	**14 St James Road RTM Company Ltd**
Representative	**:**	**Mr Paul Basson**
Respondent	**:**	**Assethold Ltd**
Representative	**:**	**Mr White of counsel**
Type of Application	**:**	**Application for a determination of the amount of any payment of accrued uncommitted service charges pursuant to s.94(3) Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Judge Prof R Percival** **Mr J Naylor FRICS FIRPM**
Date and venue of Hearing	**:**	**14 May 2024** **10 Alfred Place**
Date of Decision	**:**	**22 July 2023**

DECISION

The application

1. The Applicant seeks a determination pursuant to section 94(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of the payment of accrued uncommitted service charges held by the landlord to the Applicant upon acquisition of the right to manage the property under section 94(1).

2. The Applicant acquired the right to manage the property on 1 June 2023.

3. The Applicant served notices requiring information under section 93 of the 2002 Act on 21 March 2023. The Respondent did not provide the information required.

4. The relevant legislation may be found on the official website at https://www.legislation.gov.uk/ukpga/2002/15/contents.

Procedural history

5. There is a lengthy procedural history. We rehearse it here, as it is relevant to the Respondent's application to adjourn the hearing and to the basis upon which we must come to our conclusions.

6. The first directions were made, by Judge Percival, on 21 September 2023. Those directions provided for the Applicant to send to the Respondent and the Tribunal by 16 October 2023 the claim notice, the leases or a sample lease, a statement of what they allege were the uncommitted services charges in the hands of the Respondent on or after the acquisition day, together with any submissions on the law or other documents to be relied on. The directions explicitly referred the parties to *OM Ltd v River Head RTM Co Ltd* [2010] UKUT 394 and provided the url of a free copy of the judgment. Those directions went on to require a reply by the Respondent by 13 November 2023. Determination was to be on paper, in the week commencing 5 February 2024.

7. On 20 December 2023, Judge Martyński ordered that the case be heard in person on 5 February 2024. He further ordered that Mr Ronni Gurvits attend the hearing and bring with him relevant financial information. The Respondent's managing agent is Eagerstates Ltd. Mr Gurvits is an employee of Eagerstates Ltd. Mr Gurvits is well known to the Tribunal as a highly experienced managing agent.

8. In setting out the reasons for the order, Judge Martyński related that the Applicant complied with the direction referred to above on 13 October 2023, and that thereafter there was initially an agreed

extension of time for the performance of the Respondent's direction. When the Respondent did not comply within the extended deadline, the Applicant filed an application to debar the Respondent (Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 9). The Respondent then made an application to strike out the application under rule 9, on the basis that, while the Applicant had sent the necessary documents, there was no "statement of case", and that it was thus impossible for the Respondent to respond. Judge Martyński stated his conclusions that the Applicant had fully complied with the relevant direction, and that its case was entirely clear from the documents provided. He refused both rule 9 applications (noting that there was no point in debarring the Respondent, as the point of the application at that time was to obtain information from the Respondent).

9. On 2 February, 2024, Judge Nicol ordered that the hearing listed for 5 February 2024 be converted to a case management hearing, and, on 5 February, gave further directions, and made an order under rule 20(1)(b) of the 2013 Rules. The order required the Respondent to produce the following list of documents (we quote):

(i) A copy of the most recent buildings insurance policy or a summary of cover, a copy of the schedule and evidence of payment of the premium;

(ii) Brief details of the claims history for the last 3 years;

(iii) A copy of the Financial Statement for the year to 31st December 2022;

(iv) The final account for the period from 1st January to 31st May 2023.

(v) A list of service charges due from or held on account in respect of each flat;

(vi) Details of any surplus monies held on account of service charges; and

(vii) The percentages of service charges payable in respect of all the flats contained at the premises

10. Judge Nicol sets out the events preceding these directions and orders, and at the case management hearing. We quote from those:

> (7) By email dated 15th January 2024 Mr Gurvits sought to repeat the strike out application on the same grounds and claimed to have provided disclosure and dates to avoid which included 5th February. In fact, he hadn't provided either. By letter dated 17th January 2024 Judge Martynski said that the application had already been ruled on and the Tribunal had no record of any dates to avoid.
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> (8) By email dated 24th January 2024 Mr Gurvits said "we intend to appeal this matter" and again claimed to have provided dates to avoid. By email on the same day, Judge

Martynski commented that there was no record of any appeal and so the hearing would go ahead.

(9) On 1st February 2024, 6 weeks after Judge Martynski's order and just one clear day before the hearing, Mr Gurvits applied to vary the date of the hearing and remove the witness summons, giving the following grounds to which the Tribunal responded in a further order on 2nd February 2024 dismissing his application:

> (a) *We note that the Applicant has failed to produce any sort of bundle (never mind a statement of case)*. The Tribunal has the Applicant's indexed, 96-page bundle. If the Respondent has somehow not received this, it can be addressed in the case management hearing.
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> (b) *The Directions at paragraph 7 did not fix any date, the application was to be dealt with on paper, therefore this date was never blocked out!* This is a correct description of the original directions but the hearing was listed by order on 20th December 2023. It is not appropriate to wait until one clear working day before the hearing to seek to vary that order.
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> (c) *Paragraph 8 of the Directions states that any hearing would be by video and the Tribunal has not done so*. Similarly, the order of 20th December 2023 varied the nature of the hearing to face-to-face.
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> (d) *We still intend to appeal this matter to the Upper Tribunal, and the time for doing so has not expired*. There is no right of appeal until there has been a determination so time has not even started running, let alone expired. It is premature to consider the relevance of any appeal at a time when it is not known whether there will be one.
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> (e) *In light of the above we cannot understand how any hearing can proceed on the 5th February or how the Tribunal can force the Respondent to attend on this date, when it was never envisaged by the Tribunal to be a date for a hearing and the Respondent has confirmed they cannot attend on this date*. It was envisaged by the order of 20th December 2023 that Mr Gurvits would attend the Tribunal on 5th February 2024, over 6 weeks later. The Tribunal has not seen any assertion, let alone any evidence, that Mr Gurvits is unable to attend the Tribunal on 5th February 2024.

(10) Therefore, the hearing went ahead on 5th February 2024. The hearing was attended by Mr Paul Basson and Mr Philip Carter on behalf of the Applicant and by Mr Gurvits on his own behalf and that of the Respondent.

(11) Mr Gurvits explained that today is his wedding anniversary and he had booked the day off. The Tribunal does

not understand why he couldn't have said this earlier or provided some evidence in support.

(12) Mr Gurvits properly attended the Tribunal in accordance with the witness summons but had not brought any of the documents with him. His first excuse was to say he couldn't because, not knowing the Applicant's case, he wouldn't know which documents were relevant and, therefore, which ones to bring. However,

(a) The witness summons asked for all documents relating to the property. This was not limited to documents identified as relevant to the application.

(b) In paragraph J of his order, Judge Martynski had already identified the Applicant's case, namely to establish what the uncommitted Service Charges are.

(c) The Applicant had already identified which documents they sought in notices sent to the Respondent on 21st March 2023 pursuant to section 93 of the Commonhold and Leasehold Reform Act 2002.

(13) When Judge Nicol made these points to Mr Gurvits, he said that there were too many documents within the terms of the witness summons for it to be practicable for him to produce them all. In relation to the section 93 notices, he was unable to say why the Respondent had not complied with them.

(14) Judge Nicol pointed out that parties have a duty to co-operate and do their best to ensure the litigation runs smoothly, in accordance with which Mr Gurvits could have produced at least some relevant documents. He responded that there was no express direction specifying that he do this.

(15) Mr Gurvits is involved often enough with the Tribunal to have a much better idea of what is required of him than most. The Tribunal is severely disappointed with his efforts to date in this case and seriously considered whether to exercise the power under rule 8(5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to refer him to the Upper Tribunal.

(16) However, it is arguable that the witness summons's requirement for the production of documents was too widely drawn. The Applicant's priority is to get the documents they require sooner rather than later and the delay involved in a referral to the Upper Tribunal would not help them. The Tribunal has now been able to speak to Mr Gurvits face-to-face, and to the Applicant, to identify precisely what could and should be produced and when.

(17) Therefore, the Tribunal has decided to replace the witness summons with an order requiring Mr Gurvits to produce certain documents and give him another chance to comply. It

> is possible that the documents will satisfy the Applicant so that there is no longer a dispute and the case can be withdrawn. If not, the following Further Directions will apply.

11. There then followed the order referred to in our paragraph 9 above.

12. Judge Nicol then made further directions, expressed as replacing those made on 21 September 2023. The first (at paragraph 3) required the Applicant to email to the Respondent "a statement of their case as to the accrued uncommitted service charges it alleges were in the hands of the Respondent on the acquisition day or thereafter" by 8 March 2024. The Respondent was to email its statement in reply by 22 March 2024, and provision was made for a reply if desired. Bundles were to be delivered by the Applicant on 19 April 2024, and the hearing set for 27 May 2024.

13. On (we were told) 23 February 2024, the Respondent provided a single page, which purports to show the expenses from December 2022 to "handover". This showed total expenses of £6,349.98, and a balance indicating differing levels of arrears for each flat.

14. Finally, on 5 April 2024, Judge Holdsworth issued yet further directions. In setting out the background, the Judge relates that, on 26 March 2024, the Applicant sought a revision of Judge Nicol's directions, requesting that the Respondent "specifically confirm the amounts held as accrued, uncommitted service charges up to the date of the handover", and for "sight of invoices, evidence of works". The response from the managing agents was that the documents has already been disclosed, and a request for further disclosure should have been made earlier.

15. Judge Holdsworth considered that

> The disclosure requested is intended to answer the primary enquiry about uncommitted monies outstanding at handover. The service charge enquires are reasonable, targeted and necessary for the preparation of the Statement of Case by the Applicants.

16. He went on to give a further direction as follows:

> The order and further directions given by Judge Nicol on 5 February 2024 were to remain in their entirely save for by April 18, 2024, the Respondent will provide the Applicant with the following information:
>
> - confirm amounts held as accrued, uncommitted service charges up to the date of the handover. This to be done for each flat at the property. Any variation between amounts to be explained and justified by relevant demands;

- Supply of Copy invoices that relate to service charge accounts to May 31, 2023 for Common Parts Cleaning, Window Cleaning, Fire and Safety, Repairs and Maintenance, Electrical survey and audit and Handover fee.

- A detailed explanation of the calculation of arrears for flats 1 and 4

17. It appears that the Applicants sent a bundle to the Respondent on 16 April 2024. The Respondent responded, emailing "how have you sent a bundle when you haven't even sent a statement of case and have other applications?"

18. The Respondent replied to the Tribunal's email attaching Judge Holdsworth's directions, saying that "this has all been dealt with in full during the initial disclosure submitted. We don't have any further documents that would necessarily show this."

The leases

19. We were provided with a specimen lease (that to flat 2), on the understanding that all of the leases were to like effect.

20. The lease is for a term of 99 years from June 1992.

21. The tenant covenants to pay an interim charge and a service charge, as set out in the fifth schedule (clause 4(4)). The Schedule defines the service charge as the lessee's share (25% for each flat) of the total expenditure of the lessor in performing its obligations under clause 5(5). Those are the lessor's repairing, redecoration, insurance covenants, and that to light and carpet the common parts.

22. The interim charge is the sum to be paid on account of the service charge in each accounting period, and provision is made for reconciliation (paragraphs 4 and 5). The interim payment is to be paid in equal instalments on the 25 December and 24 June in each year (paragraph 3). The accounting period is defined as the period of a year from 24 June each year.

23. As soon as practicable after the end of the accounting period, the lessor should serve a certificate showing the total expenditure for the period, the amount of the interim charge (and any deficiently/surplus carried forward).

The hearing

24. The Applicant was represented by Mr Basson. He was accompanied by Mr Carter, another one of the leaseholders, who assisted us on some

occasions. Mr White of counsel represented the Respondent. Mr Gurvits did not accompany him.

The preliminary issues

25. Mr White made an application to adjourn the hearing, and a second application to strike out. He effectively (and, with respect, sensibly) did not pursue the second.

26. In his submissions, Mr White started with Judge Nicol's directions, orders and the case management hearing. He noted that the directions required a statement of case, and a specific list of matters to be disclosed. He then referred to Judge Holdsworth's directions, which, he said, were based on the assumption that further disclosure by the Respondent was necessary for the Applicant's to produce a statement of case. However, all of the Judge Nicol deadlines had elapsed by the time of Judge Holdsworth's directions.

27. So, Mr White submitted, effectively, the purpose of Judge Nicol's directions was to resolve the issues in the case, first to force the Respondent to provide disclosure (Mr White told us that he could not account for the Respondent's inability to provide the disclosure), and secondly to put in place the statement of case so the parties could properly argue the matter. We were, he submitted, now in the position where the former had been achieved, as disclosure had been effected, albeit it took Judge Holdsworth's order to do so, but we did not have the Applicant's statement of case, and therefore the Respondent had not had an opportunity to respond. In the result, the position that Judge Nicol had sought to achieve – that both parties were in a position to proceed, had not been reached.

28. The Respondent, therefore, argued that the hearing should be adjourned so that the Applicant could produce a statement of case to which the Respondent could respond.

29. Mr Basson, for the Applicant, said that all they needed was a set of accounts held over, with supporting evidence in relation to costs incurred, which, he said, was entirely straightforward. Mr Gurvits, he said, had continually declined to provide the documentary evidence necessary, noting that he attended the previous listing without any of the documentary evidence that had been required. All that had been disclosed was the single page referred to at paragraph 13 above. Their case was therefore a simple one – these costs are said to have been incurred, but there was no proof of the work having been done.

30. We adjourned to consider the application, and then refused it. We gave brief reasons at the time, and indicated that we would give full reasons in this decision, which we now do.

31. We consider that the history of proceedings set out above demonstrates a long and continuing series of attempts by the Respondent to obstruct the application. In the first phase, the Applicant provided the documentation required by the initial directions in good time, and Judge Martyński, in the second interlocutory intervention, said that the Applicant's case was perfectly clear as a result. The Respondent, represented for all purposes at this stage by the highly experienced Mr Gurvits, repeatedly insisted that the Applicant had not provided a "statement of case", despite the fact that the directions did not require the Applicant to do so, and the Applicant had done what it was required to do. The Respondent persistently failed to adhere to the relevant directions.

32. In the second phase, encompassing Judge Nicol's and Judge Holdsworth's orders and directions, provision was made for the Applicant to provide a statement of case, but it was recognised that, to do so (ie in addition to providing the documents that, per Judge Martyński, rendered the Applicant's case clear) required further disclosure by the Respondent. The Respondent's only additional disclosure was of the single page document referred to above, which did not include any supporting evidence for the expenditure referred to therein. So, again, the Respondent was in default. It is true that it was unfortunate that Judge Holdsworth's directions, which clearly recognised that fuller disclosure was required before the Applicant could provide its statement of case, did not make consequential amendments to the timing of the requirement for a case statement (and subsequent Respondent's reply), but that did not make any difference, as the Respondent's disclosure was in any event inadequate.

33. Our own conclusion is that the nature of the Applicant's case was perfectly clear from the point of the original provision of documentation, as required by the first directions. The nature of this jurisdiction is different from that of, say, an application in relation to service charges under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), or for a breach of covenant under section 168(4) of the 2002 Act. In those contexts, it is essential that an applicant indicate what, specifically, it challenges in the broad generality of a demand for service charges, or what, exactly, it is said constitutes a breach of a specified covenant in a lease. In the section 94(3) jurisdiction, there is always only one, global, question – how much accrued but uncommitted service charge funds are in the hands of the Respondent landlord on or after the acquisition day? The answer to that question is also, always, in the hands of the Respondent, as a matter of simple accounting. It is fair to require the Applicant to raise an issue by stating what it thinks, or alleges, the amount to be (as was done in this case from the very outset), but there can be no scope for confusion or unclarity in a Respondent landlord as to what case it has to meet, and how it should support its own account of the accrued uncommitted service charges. There may of course be cases in which there are multiple service charges capable of being demanded for different

purposes, such as estate charges, block charges, parking charges and so on, and in such a case no doubt it would be necessary for an applicant to specify which category it contests. But this is a simple, four flat house conversion with one ordinary service charge.

34. There is no doubt in our minds that the Respondent, despite its protestations to the contrary, knew perfectly well what case it had to meet from 13 October 2023.

35. Where the party able to provide material to justify its position fails to do so in persistent disregard of the Tribunal's directions, the Tribunal must do the best it can, without acceding to yet further applications for adjournments. To do otherwise rewards obstructive behaviour by the party in default.

The hearing and our decisions

36. With the agreement of both parties, we proceeded flexibly by way of submissions from both parties, allowing, where appropriate, some evidence to be adduced. It was, accordingly, possible for some evidence to be heard from the Applicant via Mr Basson and Mr Carter. It was, of course, only possible for Mr White to make submissions. Had Mr Gurvits chosen to attend, it would have been possible for him to provide evidence for the Respondent, but he had chosen not to be present.

37. It was the Respondent's case that the leaseholders were all in arrears, and that there were no accrued uncommitted service charges in the Respondent's hands at the relevant time. This was contested by the Applicants. At the hearing, we first considered what was the proper approach to expenditure during the period from the end of the service charge year (31 December 2022) to the acquisition date (1 June 2023). We then considered if there were arrears to be taken into account in calculating the accrued uncommitted service charge.

38. Despite the terms of the lease, the Respondent operated a calendar year accounting period, and made an interim demand of half of the estimated annual service charge at the end of December or the beginning of January for the following year, with another, subsequent, demand for the other half.

39. We proceeded, again with the agreement of both parties, by considering the categories of expenditure in the table showing the Applicant's view of expenditure during the relevant period (at page 78 of the bundle) and Mr Basson's email of 7 March 2024, in which the Applicant puts queries to the Respondent (page 24), and the corresponding document setting out the Respondent's view (page 26). We also referred to the finalised service charge account for 2022 (page 27).

40. In considering what had been expended during the relevant period, a calculation necessary to determine what the accrued uncommitted service charge was, we are not undertaking a reasonableness enquiry under section 19 of the 1985 Act, as on an application under section 27A. That is excluded by *OM Ltd v New River Head RTM Co Ltd* [2010] UKUT 394 (LC). Rather, we are coming to conclusions about what we think the landlord actually expended. Where we reduce a figure from that asserted by the Respondent, it is because we do not believe it actually spent that which it claims.

41. We record for completeness that it was agreed that there had been no expenditure on insurance. The Applicant also agreed the Respondent's figure for communal electricity of £106.97.

42. The Applicant contested the Respondent's figure for common parts cleaning, £613.81. The figure for the previous year was £681.24. The Applicant's figure of £100 was based on their contention that there had only been two cleaning visits conducted during the relevant time, on the basis that those living at the property had only seen that many visits. We rejected this basis for assessing the frequency of cleaning, in that we were not prepared to accept that observations (or, more specifically, non-observation on other occasions) alone by leaseholders could be determinative.

43. However, without any explanation, the Respondent's figure – nearly the same as the previous 12 months for five months – was not credible. The Respondent has had ever opportunity to provide invoices to support this surprising figure, and has not done so. We do not believe it.

44. Accordingly, we concluded that we should apportion the previous year's total for five months, giving a total of £283.75 (in the hearing, we calculated the sum as £340, which appears to be based on erroneously calculating the figure on the basis of six, not five, months).

45. Mr White agreed that, once we had decided not to adjourn and therefore proceed without invoices from the Respondent, that monthly apportionment was an appropriate quantification.

46. Window cleaning was done quarterly. The previous annual figure was £252. The Respondent had a figure of £555 for "window and gutter clean" for the relevant period. The Applicant proposed £200 for window cleaning. After discussion, the Applicant suggested that the most plausible assumption was that there had been a £300, or thereabouts, fee for gutter cleaning (which seems inherently plausible), to which the Respondent had added the whole of the annual fee, an approach similar to that in the previous category. We agreed. Given that the window cleaning was quarterly, we had to determine whether there had been one clean or two, and concluded that we could not

reasonably exclude two cleans, at £126, plus the £300, giving a total of £426. Mr Besson observed that, since acquiring the right to manage, the Applicant had secured a much cheaper per visit contract (as noted above, if this has any relevance, it is to the plausibility of the Respondent's assertion, not to a reasonableness assessment).

47. The Respondent claimed a spend of £732 for "FHS", which we take to denote fire health and safety. In the previous year, the Respondent had charged £462 for "fire health & safety services", £350 for a fire health and safety assessment and £476.16 for monthly testing of emergency lighting and smoke detectors.

48. We have no invoices nor any other evidence as to what the first of these charges relates. Mr Basson and Mr Carter were not aware of any relevant service, other than the alarm/emergency light testing. If a fire health and safety assessment was carried out last year, then another this year would not be necessary, and so we must assume had not been carried out. As ever, it was in the Respondent's gift to explain the charge, and in the absence of an explanation we conclude that in these circumstances there is no valid explanation available. The charge of approximately £40 per visit for an alarm and emergency lighting test is at least plausible (whether reasonable or not), so we conclude that that is the only relevant expenditure in the relevant period. On a pro rata basis, the expenditure for the relevant period is £200.

49. The Respondent gives a figure of £2,157 for repairs and maintenance. There no equivalent figure in the previous year's final account, but there are figures given for a number of jobs which no doubt could be described as repairs and maintenance.

50. Mr Carter (who, unlike Mr Basson, lives at the property) said there had been no evidence of any work at all during the relevant period. None of the other occupants had mentioned any to him. This was not just a question of no-one noticing the attendance of contractors at the property. He had not made any complaints of disrepair, and was not aware that anyone else had either. Previously, when work was to be done, the leaseholders received emails warning them from Eagerstates, and none had been received in the relevant period. He had not noticed any changes to the property, as one might expect if work was done. During the period as a whole, Mr Carter said, Eagerstates had been unusually quiet.

51. Mr Basson also noted that the sum was such as to require a section 20 notice. This point we discount. We cannot assume that if there had been repairs and maintenance jobs, any one of them would necessarily have exceeded £1,000 in cost. However, the consideration does suggest that, had there been work done, there would have been several jobs, none of which were the subject of an email notice, nor observed by any of the leaseholders.

52. Mr White submitted that it was implausible that no work was done during the relevant period. He pointed to the various works that had been done in 2022.

53. We believe Mr Carter. Unlike the position in relation to cleaning, he did not just provide evidence of an absence of observation of a visit. There was that, and attendance to undertake a repair or maintain the property is likely to be much more apparent than a cleaning visit. But in addition, as he said, he did not notice that any work had been done thereafter, as he would ordinarily expect to do. Further, the complete absence of emails, which, he said, was quite contrary to Eagerstates' previous practice, we found particularly telling.

54. As the Respondent would have been aware of the right to manage application from a date in January 2023, the Respondent might be thought to have had a motive not to do any repairs. Again, the Respondent was on notice of the issue, and could have disclosed invoices or other evidence of the work. Mr Gurvits could have attended, given evidence and, if appropriate, been cross-examined. There was no such disclosure, and Mr Gurvits chose not to attend.

55. On balance, we do not believe that this or any other sum that we can quantify was expended as claimed.

56. The Respondent charges £1,110 for "electrical survey & audit". Mr Besson and Mr Carter had no idea what this could possibly have been. Mr Carter told us that he had not seen an electrical engineer or any other personnel undertaking such work, and nor had any of the other leaseholders. No report of a survey or audit had been produced. If a survey/audit had taken place in the months before an RTM Company acquired the right to manage, the only point could have been to have provided it to the RTM Company.

57. Further, as the Applicant argued, this sum would have triggered a section 20 consultation process. Mr Gurvits is, of course, fully conversant with these processes, and had undertaken one the previous year in this property in relation to external decoration. No such process had been undertaken, and there is no evidence that an application to dispense with the consultation requirements has been made to the Tribunal under section 20ZA of the 1985 Act.

58. In these circumstances, we do not believe that this sum has been expended.

59. The Respondent charged £420 as a handover fee. We accept Mr White's submission that charging such a fee in these circumstances is industry standard.

60. Mr Besson said that the RTM Company had not received anything at all, at any time, from Eagerstates. He therefore questioned what work could possibly have been undertaken to justify such a charge.

61. We understand Mr Besson's objection. Indeed, we note that the failure to provide an electrical safety certificate, and possibly other certificates, would actually put the Applicant to expense. However, it really amounts to a challenge to the reasonableness of the charge. If we had been considering the question where section 19 of the 1985 Act applied, it would have had considerable force. But we think it more probable than not that Eagerstates invoiced the Respondent freeholder for that amount, and that therefore it must be counted as expended for our purposes, however unreasonable it may be.

62. Mr Besson questioned the charge for the use of an emergency line. The phone line was endorsed on Eagerstates headed paper, but it was there said to be for subscribers. Mr Besson said that the leaseholders were not subscribers, and that therefore the line could not be charged to them.

63. We come to a similar conclusion in respect of this issue. It may well be that the charge is unreasonable. It may even not be chargeable under the lease. However, we think it more likely than not that the company providing the service made the charge, in which case, the sum represented by the charge was not in the hands of the Respondent.

64. The Applicant did not contest the final item, the management fee of £607.20.

65. That disposes of the effect of the in-year claimed expenditure on the identification of accrued, non-committed service charge. We now turn to the second element of the Respondent's case, which is that the leaseholders were all in arrears at the beginning of the period, which is relevant to what the Respondent had in hand and unexpended at the acquisition date.

66. On Mr Gurvits' statement of expenses relating to the relevant period, the arrears are shown as follows:

    Flat 1: £315.49

    Flat 2: £105.47

    Flat 3: £105.49

    Flat 4: £255.48

67. We spent a considerable time attempting to understand how the arrears figures set out in Mr Gurvits' statement were to be explained. The Applicant's position was that none of the leaseholders were in arrears.

68. It is relevant that the reasonableness and payability of service charges in 2021 and 2022 were determined by the Tribunal on an application under section 27A of the 1985 Act by all the leaseholders in a decision dated 20 June 2023 (LON/00BF/LSC/2022/0392, Judge Lumby and Mr Waterhouse). In advance of that, the leaseholders had retained a proportion of the service charges in issue. The Tribunal came to a mixed decision, in which the Applicants conceded a number of points, but only, Judge Lumby reported, on the basis of the late production of invoices by the Respondent (the Tribunal made orders relieving the Applicants of 75% of the cost of the proceedings under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act). The evidence of Mr Basson and Mr Carter, uncontradicted by the Respondent, was that on receipt of the Tribunal's decision, all the leaseholders paid what the Tribunal had decided (or they had conceded) that they owed, which was £1,430 each.

69. We note that there was a suggestion from the Applicant that the arrears arose because Mr Gurvits had said that he was entitled to maintain the sums which the Tribunal found were not payable in the account, because he was intending to apply for permission to appeal to the Upper Tribunal. It was not entirely clear, but we think it was suggested that this point had been made orally to one of the leaseholders at some point. This does not, however, appear to explain the arrears set out in Mr Gurvits' statement, as they do not appear to bear any clear relationship with the figures derived from the Tribunal decision, nor, indeed to each other – if that were the explanation, they should have all been the same. We do not think we can proceed on the basis that this is the explanation. There was no suggestion that permission to appeal had been sought either from the Tribunal or the Upper Tribunal. Any application now would, of course, be well out of time now.

70. The Applicant argued that it could not be the case that they owed arrears other than those in issue in the section 27A application, because if they had done, the leaseholders would have received chasing emails and penalty charges from the Respondent, and they had not. We accept their evidence and that argument, so it seems to us that if there were arrears, they must somehow have accrued since June 2023.

71. The leaseholders paid what they considered to be a reasonable advance service charge in early January of £983.13 each, a total of £3,932.52. There is no reference to these payments in Mr Gurvits' statement. We cannot wholly exclude that the arrears figures he gives already take account of those, but neither is it evident that they do.

72. The Respondent must have at its disposal service charge accounts that would immediately clarify the issue. These were specifically required to be produced by the Respondent by an order under rule 20(1)(b) of the 2013 Rules made by Judge Nicol on 5 February 2024, but have not been. Or Mr Gurvits could have attended and given evidence.

73. We did consider whether we should adjourn to secure the figures or to make provision for written submission on the subject. We concluded that we should not. Both parties agreed that the sums involved were such that yet further delay would not be proportionate (see the overriding principle in rule 3 of the 2013 Rules), although they differed as to how we should resolve the issue.

74. The Respondent has had every opportunity to provide evidence to support its contentions. The relevant material is in its hands alone, and is not otherwise available to the Applicant. We have found, above, that in respect of a number of headings, we do not believe the Respondent's case, but that the evidence of Mr Basson and Mr Carter has been reliable. In these circumstances, we consider that we must make a binary determination between the parties' contentions, on the one hand that the arrears set out above are owed, or on the other that there are no arrears.

75. We prefer the Applicant's case. No arrears are due. We also do not believe that the leaseholders' payment of a total of £3,932.52 has been taken into account.

76. We confess to having found this determination difficult, because of the difficulty of understanding the origin of the claimed arrears. If we have made a mistake in our understanding of the figures available to us, or either party considers that otherwise our conclusion cannot be supported on the material available to us, they may make an application for us to review this decision under Tribunals, Courts and Enforcement Act 2007, section 9 and rule 55 of the 2013 Rules. We will not, however, consider an application to review on the basis of new evidence that was available to the party making the review application before the hearing of this application.

77. As a result of these determinations is as follows.

78. The total expenditure that we have found that the Respondent has incurred in the relevant period is £2,091.92. The sum paid over by the leaseholders in respect of the same period was £3,932.52.

79. Accordingly, we determine that the accrued uncommitted service charges are £1,840.60.

Rights of appeal

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

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

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

83. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 22 July 2024