FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UG/LIS/2023/0009**
Property	**:**	**21-25 Eaglegate, East Hill, Colchester, Essex CO1 2PR**
Applicants	**:**	**(1) Ray Harris (Flat 24)** **(2) Heather Harris (Flat 24)** **(3) David Flavell (Flat 25)** **(4) Jill Knight (Flat 25)** **(4) Mark Patston (Flat 22)** **(5) David West (Flats 21 & 23)** **(6) Vanessa West (Flats 21 & 23)**
Representative	**:**	**Ray Harris**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Wendy Banks, Counsel**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	**:**	**Judge K. Saward** **Mr G.F. Smith RICS FAAV**
Date of hearing	**:**	**25 March 2024**
Date of decision	**:**	**11 April 2024**

DECISION AND REASONS

Decisions of the Tribunal

(1) In accordance with Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal directs that Heather Harris (Flat 24), Vanessa and David West (Flats 21 and 23), Mark Patston (Flat 22), Jill Knight (Flat 25) and David Flavell (Flat 25) be added as Applicants.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal makes no order for reimbursement of the £100 application fee incurred by the Applicants.

(4) The Tribunal orders that the Respondent shall pay the Applicants £200 within 28 days of this Decision, in respect of the reimbursement of the Tribunal hearing fee paid by the Applicants.

(5) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') that the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charges to be paid by the Applicants, insofar as these might otherwise have been payable under their leases.

(6) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") extinguishing any liability of the Applicants to pay any administration charges in respect of the litigation costs of this Application insofar as these might otherwise have been payable under their leases.

REASONS

The application

1. The application is dated 1 March 2023. It was made by Ray Harris for a determination pursuant to section 27A of the 1985 Act as to the amount of service charges payable to the Respondent in respect of the service charge years 2017 to 2023. From the information provided, the service charge year runs from 1 January to 31 December each year.

2. The application also seeks orders: (a) to limit any recovery of the Respondent's costs of the proceedings through the service charge, under section 20C of the 1985 Act; and (b) to reduce/extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

3. In the application form, Mr Harris gave the names of other leaseholders as additional applicants. During the course of the proceedings, signed and dated consent forms were produced by those other leaseholders agreeing to be joined as Applicants and authorising Mr Harris to act on their behalf. In exercise of its powers under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal directs that the additional named leaseholders of Flats 21-25 Eaglegate be added as Applicants, as applied for.

4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. A remote hearing was held as consented to by the parties. The form of remote hearing was CVP Video.

6. Mr Harris appeared and spoke for himself and all the other Applicants. He was assisted by Mrs West who was in the same room. Mr Patston also attended and spoke briefly to query a sum of £4,892.02 paid upon his lease extension. Whilst correspondence was provided on this matter, it was unclear if it actually related to service charges. It did not form part of the application in any event. Accordingly, Mr Patston was informed that his specific case cannot be considered, and it has been disregarded in this Decision.

7. The Respondent company was legally represented by Wendy Banks (Counsel). Ms Banks confirmed that she was instructed solely by Assethold Limited and not Eagerstates Limited, the managing agents, who had completed and submitted documentation to the Tribunal on the Respondent's behalf. As no-one from Assethold Limited or Eagerstates Limited was present, Counsel was unable to answer questions about the property and appeared to have limited instructions. Counsel could clearly not give evidence, and so oral evidence was limited to that given by Mr Harris.

8. The documents to which the Tribunal was referred are within two bundles. The main bundle is composed of some 328 pages. A supplemental bundle, including the Applicant's revised supplementary statement of case, runs to 74 pages.

9. It emerged that Ms Banks had not been provided by her client with a copy of the completed Scott Schedules within the main bundle. It also transpired that the Applicants had supplied edited service charge demands rather than the entire copies. Neither the Tribunal members nor Ms Banks had a copy of a previous Tribunal Decision mentioned in the bundles. An adjournment, initially of 30 minutes was given, then extended to 45 minutes, to allow opportunity for the missing

documents to be produced and read. Upon resumption, all parties confirmed that they were ready to proceed.

10. It was agreed at the outset that the Tribunal would look at each issue in the Scott Schedules, point by point, so that both the Applicants and Respondent had their 'turn' on each item as a discrete issue, before moving onto the next.

11. The Tribunal noted that the Respondent's responses in the Scott Schedules were limited at best and no responses were added to the Scott Schedules in the supplemental bundle.

12. The Applicants confirmed that the Scott Schedules at pages 126 to 128 (inclusive) of the main bundles should be disregarded having been superseded by those in the supplemental bundle.

The background

13. The Applicants are the leaseholders of 5 purpose-built flats within a building at 21-25 Eaglegate, East Hill, Colchester with small garden to the rear ("the property"). The property forms part of a wider estate owned by the Respondent.

14. Each Applicant holds a long lease of their flat which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

15. A number of the leaseholders formed a company, 21-25 Eaglegate RTM Company Limited, which made an application to the Tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002. By a decision dated 2 September 2022, the Tribunal determined that the company was entitled to acquire the right to manage the property.

16. It was accepted by Ms Banks that the company acquired the right to manage on 2 December 2022 albeit some documents sent by Eagerstates Limited to the Applicants seemed to suggest it was later.

17. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

18. At the start of the hearing the relevant issues for determination were identified as those set out in the Tribunal's Directions of 27 July 2023 as follows:

(i) Whether the relevant costs are payable by the leaseholders under the lease and/or were incurred and relate to the periods before acquisition of the right to manage;

(ii) Whether the costs are reasonable/were reasonably incurred;

(iii) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made;

(iv) Whether an order for reimbursement of application/hearing fees should be made.

19. Having heard evidence and submissions from the parties and considered all the documents provided, the Tribunal has made determinations on the various issues as follows below.

The lease

20. A copy of the lease for Flat 24 has been provided. It is a long lease originally demised for a term of 99 years commencing on 1 January 2004. The term for Flat 24 was subsequently extended.

21. The Tribunal states at the outset that it considers the lease is of poor quality and appears to have several errors or contradictions to which attention will turn where relevant to the issues under consideration.

22. Under clauses 3 and 4, the tenant covenants with the landlord to perform and observe the obligations in the Fourth and Fifth Schedules, respectively. At paragraph 10.1 of the Fourth Schedule, the tenant covenants to pay and keep the landlord indemnified against the General Service Charge Percentage. The percentage is defined as 20%, but with provision within clause 10.1 for the landlord to exercise discretion to vary the apportionment.

23. The 'General Service Charge' is defined to mean an item of expenditure which is intended to be chargeable (in whole or in part) to all lessees of the Block. The Block means the new building known as 'Old Brewery' together with the grounds thereof, shown for the purposes of identification, edged orange on Plan A attached to the lease, including any amendments or additions thereto.

24. At paragraph 10.2 the tenant covenants to pay and keep the landlord indemnified against the 'Buildings Insurance Percentage', also defined as 20%.

25. Under clause 9.4, where a tenant is obligated to pay a contribution, the landlord acting reasonably is entitled to designate whether an item of

expenditure is treated as a General Service Charge Item or an Access Road Service Charge Item.

26. The 'Access Road Service Charge' means an item of expenditure which is intended to be chargeable (in whole or in part) to all lessees on the Estate. The percentage is expressed as 3.75%.

27. The Estate is defined as the land and buildings comprised in the landlord's registered title under absolute title number EX339357. Ms Bates confirmed that her enquiries had revealed that no such title number exists. The same incorrect title number appears at the top of the lease.

Building insurance for Stopes House basement - £2431.50 (2017), £2506.48 (2018), £2672.42 (2019), £2886.15 (2020), £2,672.42 (2021), £3046.80 (2022), £3,199.14 (2023)

28. The Applicants claim there is no provision within the lease for the building insurance costs for the Stopes House basement to be recoverable. In contrast, the Respondent says that the sums are recoverable as estate charges because the space houses meters, electrical wiring and other services shared by all buildings on the estate. The Applicants say the electricity meter for the property is not within the basement but is located in their own building.

29. Ms Banks could not say whereabouts the basement is. Mr Harris identified Stopes House as the 'existing building Plots 1-11' shown hatched on 'Plan A' within the lease. As far as he knows, the basement is immediately beneath the building.

30. Under paragraph 7.1 of the Sixth Schedule, the landlord's obligation is to insure 'the Block'. By definition that includes the property at 21-25 Eaglegate, which is the 'new building' formerly known as 'Old Brewery' including the grounds thereof said to be delineated in orange on the plan. On the Tribunal's copies of the lease plan, there is no area clearly marked orange. A coloured line is drawn around a large area encompassing the property, estate roads and car parking spaces, including those for other buildings. Whilst Ms Banks contended in closing that the line appears orange on her copy of the plan, she had acknowledged earlier that it was unclear. Indeed, the Tribunal finds difficulty in distinguishing any difference in colouring between the access roads shaded brown and the marked outline.

31. The way that 'the Block' is defined with reference to the building 'and grounds thereof' appears to suggest that it means the building and garden, or at least a smaller area than sown within the coloured outline. That is particularly so as the coloured outline includes the roads, communal bin store, and various parking spaces on the opposite side of

the road to the property. Quite why those areas, some of which come within the demise of other properties, would fall within 'the Block' appears odd. Whether the coloured outline is meant to denote 'the Block', 'the Estate' or something else cannot be established with any clarity on the available information.

32. Even if the coloured outline is the orange delineation, Stopes House is not shown within it. In the professional opinion of the Tribunal, it would be unusual for a basement to extend beyond the building footprint. Thus, we conclude that the basement is not within 'the Block'.

33. The further difficulty for the Respondent is that even if the basement insurance was intended to be chargeable to all lessees on the Estate as part of 'the Access Road Service Charge', it cannot be demonstrated that the basement falls within 'the Estate'. As Ms Banks acknowledged, the estate is defined but not correctly.

34. Whether or not the basement houses any meters or services for the property, no-one knows what area constitutes 'the Estate' as the Land Registry title number within the lease is wrong.

35. The Tribunal is not satisfied that there is provision within the lease for recovery of the building insurance for the Stopes House basement. **The Tribunal determines that the said charges are not payable and are disallowed.**

Block building insurance - £3,603.52 (2021); £4157.84 (2022)

36. The Applicants consider that the premium was excessive compared with other quotes they had obtained and there had not been proper market testing. Lower priced quotes are provided.

37. The Respondent's position is that it is required to insure the block, which includes the grounds, access roads, car parks and spaces. This assumes that the coloured outline on the plan is the area defined as being delineated in orange. As set out above, that is by no means clear with ambiguity over the interpretation and extent of the Block. Notably, the Block Insurance Percentage is given in the lease as 20% (there being 5 flats). It would be odd if the block covered the whole area within the coloured outline when that area includes roads and parking spaces used or belonging to other leaseholders besides the Applicants.

38. It is apparent that the Applicants attempted to obtain alternative insurance quotes but were impeded by never having seen or read a copy of the policy even though it was requested, and it is not within the bundles. Ms Banks had no information on the insured amount. In the absence of the policy or even any basic details, a like-for-like

comparison between the policy taken out and the Applicants' quotes is not possible.

39. The Respondent is saved by there being no obligation on a landlord to take the cheapest quote although it is best practice to test the market, on which there is no evidence wither way.

40. There is provision within the lease at paragraph 7.1 of the Sixth Schedule for the landlord to insure the Block and to recover 20% of the cost in line with the tenant's obligation at clause 10.2. The Tribunal finds the block buildings insurance is payable, charged at 20% per flat.

41. In service charge year 2022, the right to manage had been acquired on 2 December 2022. Neither party produced evidence of the insurance policy in place from this date. However, Mr Harris confirmed that a new policy was taken out from the date of acquisition, and he offered to produce it. The Tribunal considers it unlikely that Mr Harris would have made this offer if the insurance was not in place. The Respondent's managing agent was informed by email that insurance was to be arranged from that date. As the Respondent has not produced any copies, no-one knew the date the insurance commenced, including Ms Banks. The best the Tribunal can do is to take 31 December as the policy end date, as indicated by Mr Harris.

42. Although insurance policies are usually for a 12-month period, there is nothing before the Tribunal to indicate this policy could not have been cancelled earlier and a partial refund secured. No satisfactory explanation or details to justify the charges are given by the Respondent whose managing agent did not appear.

43. In the circumstances, the Tribunal considers that it was not reasonable to charge the full years premium for 2022. A deduction of £330.35 should be made for the 29-day period following acquisition of the right to manage until the end of the 2022 service charge year. This leaves a charge of £3,827.49 to be divided between the 5 flats.

44. **The Tribunal determines that the sum of £720.70 per flat was payable for the block building insurance in 2021 and £765.50 per flat in 2022.**

Emergency light testing - £677.04 (2022); Fire door replacement - £3,562.08 (2022); Batten and bulkhead replacement - £666.08 (2022)

45. All these charges relate to works undertaken in Stopes House basement in the service charge year 2022. The Applicants dispute liability in totality. The Respondent argues that the sums are chargeable as part of the estate charges within an area shared by all buildings on the estate.

46. As set out above in the consideration of the building insurance for Stopes House basement, the Tribunal is not satisfied that the basement is within the estate to be chargeable given the ambiguity in the lease.

47. **The Tribunal determines that the said charges are not payable.**

Block electricity - £1,031.07 (2022); £479.82 (to handover)

48. The Applicants are critical of the Respondent not providing a release letter to allow another electricity supplier to be appointed from the date of acquisition of the right to manage. However, electricity was required and supplied to common parts of their building. As pointed out by Ms Banks, it is evident that only one meter reading was provided. Mr Harris confirmed that meter readings were taken but not supplied to the Respondent.

49. The Tribunal finds that a charge for block electricity supply was payable to the end of the 2022 service charge year and apportioned at 20% but to be reasonable, the amount needs to be re-calculated on the basis of actual readings and the amount of credit/debit determined.

50. Similarly, electricity continued to be supplied until a new supply was in place in July 2023 and this is payable at 20% as a block charge notwithstanding the difficulty experienced by the Applicants in securing a release and the lack of co-operation encountered.

51. **The Tribunal orders that (i) the Applicants must provide the block electricity meter readings to the Respondent within 14 days of the date of this decision, and (ii) the Respondent must within 28 days of the date of this decision re-calculate the amounts based on actual readings and re-issue an adjusted and properly accounted for service charge accordingly.**

Bin cleaning - £57.60 (2022)

52. The Applicants claimed to be unaware of which rubbish bins are being referred to. Mr Harris confirmed that there is a communal bin area. It was established that there are 5 bins used by the whole estate. There is no dedicated bin for the Applicants' block.

53. The sum of £57.60 is the total amount of invoices that the Tribunal was directed to at pages 192 to 196 of the main bundle. The explanation was given by Ms Banks that the service address is 21-25 Eaglegate and invoices were allocated individually. Mr Harris pointed out that contractors get the address wrong all the time and refer to the wider site as 21-25 Eaglegate.

54. The Respondent relies upon the landlord's discretion in clause 9.4 to designate the bin cleaning charge to the General Service Charge at 20% apportionment for the block rather than 3.75% for the estate. As the Applicants have only been charged for 1 bin, Ms Banks argued that it was reasonable to do so in all the circumstances.

55. The Tribunal disagrees. Since the bins are for the whole estate, it is not reasonable to charge the Applicants at the rate applicable for services to the block. **Taking the cumulative amount of £57.60, the Tribunal determines that the sum for bin cleaning in 2022 is £10.80 per flat calculated at 3.75%.**

Drain service - £228.00 (2022)

56. The Respondent claims that the drains serve only the Applicants' block and are separate from those on the estate that are charged separately.

57. Two invoices of £114.00 are provided at pages 202 and 203 of the main bundle. No details are given on the invoices to describe the works or to help gauge where they were undertaken. The information is so scant, it cannot be ascertained if the charges relate to the block or estate. The managing agent was not present to explain.

58. In the absence of more and sufficient detail, it is not reasonable for the charges to be charged to the block. **The Tribunal allows the charges as a service to the estate charged at 3.75% resulting in a service charge for drain services in 2022 of £8.55 per flat.**

Drop down seal - £240.00 (2022)

59. An invoice is produced at page 205 of the main bundle for £240. The description simply says 'Operative attended to supply and install a drop down seal to the spec of the report supplied by client.' The report is not provided. The Applicants say they do not know where the works were undertaken. The Respondent commented in the Scott Schedule that 'This was within the demise' without further detail. Ms Banks could not assist, and the managing agent was not present.

60. Based on the information supplied, these works could have been anywhere. No-one could clarify. There is no evidence that this relates to anything other than the estate. In the absence of sufficient information, it is not reasonable to charge to the block at 20%. **The Tribunal allows the charge calculated at the lower rate of £3.75% applicable to works for the estate resulting in a charge of £9.00 per flat.**

Weeds and hedge cutting - £480.00 (2022)

61. The invoice of £480.00 refers to cutting the overgrown weeds and hedges and cleaning moss between the tiles (front garden). Whilst the Respondent maintains that the works were within the demise of the property, the photographs at pages 213-214 of the main bundle all show areas besides Stopes House.

62. As before, Ms Banks sought to argue that it was reasonable for the Respondent to exercise its discretion within clause 9.4 of the lease to decide the means of apportionment. This was on the basis that a separate invoice was issued to a different building. No such invoice is provided.

63. The Tribunal disagrees that it is reasonable to apportion the charge to the leaseholders at 20% when the evidence points firmly to these being works within the wider estate. The charges should be apportioned accordingly at 3.75%. **The sum of £18.00 per flat is allowed.**

Removal of rubbish from garden - £264.00 (2022)

64. The invoice refers to 'Removal and disposal of rubbish from garden area' without identifying the location of the garden. The Respondent states the rubbish was within the demise of the Applicants' building.

65. The Applicants seek to cast doubt on the likelihood of this relating to the garden at the rear of their building as the garden is locked and keys would be needed for access. The Applicants were unsure if the managing agents held a set of keys and no representative from the company was present to assist. The Tribunal heard that usually Mrs West (Flats 21 and 23) provides contractors with access to the garden, and she had not done so.

66. Had the removal of rubbish been from the rear garden of the property then a 20% apportionment would have been justified and reasonable. However, there are no photographs, no clear description of the where the rubbish was located, the garden was gated and locked with no explanation as to how it would have been accessed. There is insufficient evidence that the waste came from the garden of the property.

67. **The Tribunal finds that the charge should be apportioned as an estate charge at 3.75%, being £9.90 per flat.**

Drain repairs – £1,239.60 (2022)

68. The service charge demand just says 'drain repairs' without any details. The Respondent says the drains are separate to those on the estate. The

Applicants disagree and say that this is the surface water drain shown on the photographs at pages 199 to 200 of the main bundle. Mr Harris identified this as part of the communal area within the brown shaded area on the lease plan. The managing agent was not present to clarify and Ms Banks could not say otherwise.

69. Ms Banks referred to the definition of 'the Block' as including the grounds but acknowledged that it is not well delineated.

70. Given the uncertainties in the lease and the evidence of Mr Harris, the Tribunal concludes that it is probable that the works were undertaken in an area used by the estate. Therefore, **it is reasonable that the service charge for the drain repairs be charged at the estate rate of 3.75%, amounting to £46.49 per flat.**

Carpet cleaning and replacement - £600 (2022)

71. It is undisputed that this charge is directed at cleaning and replacement of carpets within the communal areas of the building, to which a 20% apportionment would be applicable. However, the Applicants challenge whether the works were actually undertaken as residents did not see the carpets being cleaned.

72. The Respondent refers to the invoice at page 259 of the main bundle. The description of works within the invoice refers to undertaking a deep clean of the carpets and 'check for significant damage or excessive wear and tear and replace where needed.' The invoice was payable the day it was issued on 9 February 2022.

73. The photograph of the dirty and frayed entrance hall mat was taken on 25 January 2023, almost a year after the invoice. Given the lapse of time, it is not good evidence to contradict the works having been undertaken.

74. The invoice identifies works within the building. No substantive evidence has been supplied by the Applicants to demonstrate otherwise. **The charge of £600 (£120 per flat) is payable and reasonable.**

AOV and emergency lighting - £1379.32 (2022)

75. The block service charge is for the sum of £1,379.32. Ms Banks accepted that the invoices supplied in the bundle total £713.08 and she could not assist further.

76. On the evidence provided the service charge is in the wrong amount. It

should correspond with the invoices. **The Tribunal determines that the sum payable is £713.08, to be charged at 20% per flat.**

Fire related works - £2,053.20 (2022)

77. There is one invoice from the contractor for £1,740.00. The description of works sets out the steps taken to the ground and first floor electric cupboards. There is a separate invoice from the managing agents charging an 'Admin fee for section 20 for fire board in cupboard' in the sum of £313.20. The service charge relates to these combined figures.

78. However, Ms Banks confirmed that no consultation procedure under section 20 of the 1985 Act was undertaken. Thus, the admin fee cannot be payable.

79. Ms Banks argued that there were separate works that should have been invoiced separately. Had that happened then the individual contributions by leaseholders would fall beneath the £250 limit to trigger the need for consultation if the full cost was to be recoverable. This line of argument does not sit comfortably with the managing agents charging an admin fee for the section 20 process.

80. The Tribunal finds that these were all fire safety works forming part of the same schedule, as demonstrated by the single invoice.

81. By virtue of section of the 1985 Act, any relevant contributions of the leaseholders through the service charge towards the costs of qualifying works would be limited to a fixed sum (currently £250) unless the statutory consultation requirements, prescribed by the Service Charges (Consultation) (England) Regulations 2003 were: (a) complied with; or (b) dispensed with by the Tribunal. It is undisputed that the nature of the works would be 'qualifying works' for the purposes of the 1985 Act.

82. The Respondent requested that, if needed, an application is made under section 20ZA of the 1985 Act for a retrospective dispensation from compliance with the section 20 notice requirements. Such a request cannot be made through these proceedings. A separate application was needed to which leaseholders would have the opportunity to respond and raise objection.

83. Having failed to follow the section 20 process for which no dispensation has been granted, **the Tribunal determines that the Applicants' contribution towards the fire related service charge works totalling £1,740.00 is limited to £250.00 per flat. The admin fee of £313.20 is not payable and is disallowed.**

Gutter cleaning - £324.00 (2022)

84. Whilst the cost is listed in the Scott Schedule as £324.00, the amount of the service charge is £648.00 for two invoices.

85. Three invoices are provided. The first invoice of £324.00 was for gutter cleaning to the front and side of the property on 21 May 2022. The second invoice, in the same sum and from the same contractor, is for cleaning all accessible gutters on 9 November 2022. The third invoice is from another contractor to inspect and clean all gutters and downpipes in April 2022 at a cost of £1,194.00.

86. Mr Harris confirmed that he is disputing the first invoice only of £324.00 from May 2022. As the gutters had already been cleaned the month before, Mr Harris submitted that it was unnecessary for the gutters to be cleaned twice in a matter of 4-6 weeks. Ms Banks had no information save that the gutter cleaning was done on a quarterly basis.

87. Based on the invoices, the gutter cleaning was undertaken more often than quarterly with works seemingly undertaken in consecutive months of April and May 2022. The Tribunal accepts that there has been duplication in works which is not reasonable. **The Tribunal disallows the service charge of £324.00 in respect of gutter cleaning works on 21 May 2022. The service charge of £324.00 for gutter cleaning works on 9 November 2022 is payable and allowed.**

Ceiling and wall repairs £1,200.00 (2022)

88. This service charge relates to ceiling and wall repairs in the stairwell of the building, charged at 20% to the block. The Applicants cannot say the works were not done but seek a £200.00 deduction for an area they say was not repaired.

89. No managing agent attended to provide comments or details of the scope of works. The 'before' photograph (said to be supplied by the managing agents) clearly shows an area of damage and the 'after' photograph shows that it has not been decorated. The deduction sought is, by Mr Harris' own admission, 'very arbitrary'. There is no evidence that works were not done to the sum charged.

90. **The service charge of £1,200.00 is payable at 20% apportionment.**

Removal of rubbish from bin area - £228.00 (2022)

91. This service charge has been charged to the Applicants at 20% as

part of the general service charge. The contractor's invoice clearly states that the works were to remove rubbish from the bin area. Photographs confirm it to be the bin area used by the estate.

92. The Respondent reiterated the points made previously about the landlord's discretion to allocate charges to the block or estate. However, the Tribunal does not consider it reasonable to do so in these circumstances where the works clearly concern an area used by the wider estate. It is noted for 2023 that bin cleaning is now within the estate charge.

93. **The estate charge of 3.75% should apply. The Tribunal allows the sum of £8.55 per flat.**

Block service charges - £18,010.73 (2023)

94. Counsel for the Respondent conceded that these estimated charges are no longer relevant following acquisition of the right to manage on 2 December 2022.

95. **The block service charges are not payable and are disallowed.**

Estimated charges for Eastern Fire Ltd - £750.00 (2023)

96. No-one at the hearing knew what this charge was for. That being so, **the sum of £750.00 is not payable and is disallowed.**

Common parts cleaning and gardening - £648.64

97. The period of service for this charge, and those that follow below, are described as being for the period from December 2022 'to handover'. It is unclear what handover date this means, but it was acknowledged at the hearing that the right to manage was acquired on 2 December 2022. Ms Bates had no instructions on the contractual position or arrangements once the right to manage was acquired. The Applicants confirmed that there was no contract with Eagerstates Limited to continue management beyond that date. Correspondence was sent by the Applicants to the managing agents telling them the handover date.

98. Only one invoice of £170.55 for communal cleaning (page 32 supplemental bundle) pre-dates 2 December 2022. **Thus, only the sum of £170.55 is payable and allowed, chargeable at 20% per flat i.e., £34.11.**

Window cleaning - £543.60

99. All three invoices for window cleaning of the property post-date the right to manage. Nothing before the Tribunal indicates that the Applicants remain liable for these charges. As such, **the sum of £543.60 for window cleaning is not payable**.

Fire risk and health & safety - £653.40

100. This charge is composed of four invoices, all of which are disputed by the Applicants as works post-dating the right to manage.

101. One invoice for £413.40 is dated 30 November 2022 and the description of works uses the past tense. It is reasonable to conclude that the works pre-dated 2 December 2022. Another invoice for £48.00 is dated 26 December 2022 and so post-dates the 'right to manage', but the description is for monthly fire health and safety testing 'previous month'. This probably means November 2022. Both are payable.

102. The remaining two invoices of £48.00 and £144.00 were issued in 2023. The descriptions both indicate works undertaken in December onwards. As that post-dates the right to manage, they are not payable.

103. **The Tribunal determines that £461.40 is payable, being £92.28 per flat calculated at 20% for the block.**

Drain service - £114.00; Gutter cleaning - £324.00; Drone survey - £600.00; Meter cupboard works - £420.00

104. As the invoice for the drain service of £114.00 is dated 16 January 2023 and there is no detail of the works or when they were done, the sum is not allowed.

105. The invoice dated 7 June 2023 in the sum of £324.00 was for gutter cleaning on 16 May 2023, after the right to manage. It is not payable.

106. There are two invoices of £300.00 for drone surveys. One is dated 16 January 2023, the other 29 January 2023. There is no detail of when the survey was undertaken, and the report mentioned in the later invoice has not been supplied. On the information available, the Tribunal cannot be satisfied that the works pre-dated the right to manage and that they are payable.

107. The invoice of £420.00 for 'miscellaneous services' is dated 30 November 2022 i.e., before the right to manage. The service charge is described as meter cupboard works but the narrative on the invoice describes an inspection and not works. There are no details of where

the meter cupboard is. Without explanation, the Tribunal cannot be satisfied that this is a charge for which the Applicants have liability or one that can reasonably be charged to them. It is not payable.

108. **For the reasons above, none of the said charges are payable.**

Tree work - £450.00

109. The invoice is dated 28 November 2022. It describes low hanging branches in the car park. This is part of the estate. Whilst the Respondent relies on clause 9.4 of the lease, which allows discretion to designate items of expenditure to the general service charge instead, it can only do so 'acting reasonably'. It is not reasonable to allocate the charges to 5 flats when the works benefit the estate.

110. The sum should be charged as an access road service charge item at 3.75%. **Therefore, £16.88 per flat is reasonable and payable.**

Handover fee - £600.00; Accounts fee - £360.00; Management fee - £320.00

111. The Tribunal recognises that reasonable costs, which may include a handover fee, can be charged to a right to manage company under section 88 of the Commonhold and Leasehold Reform Act 2002. The Tribunal also notes that paragraph 10.1 of the Fourth Schedule of the lease contains provision for recovery through the service charge of costs and expenditure in the management of the block.

112. However, the Tribunal cannot be satisfied this is a service charge item or one that is payable when there is no evidence, invoice or explanation as neither the managing agent nor landlord was present. Moreover, it was the evidence of Mr Harris that payment was made via their Solicitors during the right to manage process to cover the managing agents' costs.

113. The accounts fee of £360.00 and management fee of £320.00 are just listed on the 'charge' sheet, which is not on headed paper and contains no other information. During the hearing, the Tribunal asked Mr Harris to check what he received. It was confirmed that no further information was supplied. There is no clarity on the time period for either amount and Counsel was unable to help. As above, the details are so lacking that the Tribunal cannot be satisfied that the sums are payable.

114. **The Tribunal disallows the handover fee, the accounts fee and management fee.**

Applications under section 20C, paragraph 5A and refund of fees

115. The Applicants applied for a refund of the Tribunal fees paid in respect of the application and hearing. Fee orders are entirely discretionary. Counsel for the Respondent submitted that the default position is that each party bears their own costs. The Applicants say that the application and hearing could have been avoided had there been better co-operation from the Respondent/managing agents.

116. The Applicants have not comprehensively succeeded, but the Tribunal has found in their favour on a significant number of charges. Notably, the Respondent disputed charges giving sparse information placing its Counsel in difficulty trying to defend its position without any representative attending the hearing from either the Respondent company or managing agents. When taking a step back, in light of our findings, the Tribunal considers that the Applicants should bear the £100 application fee, but the Respondent should reimburse the £300 hearing fee. The Tribunal will exercise its discretion accordingly.

117. The Applicants applied for an order under both section 20C of the 1985 Act, and paragraph 5A of Schedule 11 to the 2002 Act. Having taking into account the determinations above and submissions from the parties, the Tribunal determines that it is just and equitable in the circumstances for orders to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge, and under paragraph 5A of Schedule 11 to the 2002 Act to extinguish the Applicants' liability to pay an administration charge in respect of litigation costs incurred in these proceedings.

Name: Judge K. Saward Date: 11 April 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 regional office which has been dealing with the case.

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

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

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

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

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—
(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	"The relevant court or tribunal"
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court