



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

Case reference : **LON/00AF/LSC/2024/0112**

Property : **Flats C (also know as Flat 3) and A (also known as Flat 1) 141 Croydon Road, London, SE20 7TT**

Applicants : **Joanna Boylett (Flat C) (1)
Anthony Green (Flat A) (2)**

Representative : **Joanna Boylett**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge B MacQueen
Tribunal Member J Naylor, FRICS
FIRPM
Tribunal Member J Francis**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **15 August 2024**

Date of Decision : **16 September 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determined that the total sum of £11,140.19 was payable for service charges for the year ending September 2022, with each individual property being responsible for a 25% share meaning that the service charge for each property was £2,785.05.
- (2) The Tribunal determined that there were no outstanding service charges for the year ending September 2023.
- (3) The Tribunal made the determinations as set out under the various headings in this Decision.
- (4) The Tribunal made an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (5) The Tribunal made an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Applicant tenants shall not be liable to pay an administration charge in respect of litigation costs.
- (6) The Tribunal determined that the Respondent shall reimburse the Applicants for the Tribunal fees paid by the Applicant within 28 days.
- (7) Following a transfer order made by Deputy District Judge Suki Waschkuhn dated 15 March 2024 relating to claim 486MC893, the proceedings in the County Court were stayed pending the final determination of this matter in the First-tier Tribunal. Now that the Tribunal has made its determination, claim 486MC893 is transferred back to the County Court, along with this Decision, so the County Court can finalise the claim that is before it.

The Application

1. The Applicants sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 30 September 2021 to 29 September 2022, and 30 September 2022 to 29 September 2023. The application was sent to the Tribunal by the Applicants by email on 28 December 2023.
2. On 11 January 2024 the Respondent issued proceedings in the County Court Business Centre in relation to Flat 3. The claim was transferred to

this Tribunal by order of Deputy District Judge Suki Waschkuhn on 15 March 2024.

3. By directions dated 9 April 2024, the Tribunal directed that because the issues involved in the County Court claim overlapped with those in the First-tier (Property) Chamber and that a determination of the Tribunal's application was likely to conclusively determine almost all of the issues in the County Court claim, the proceedings in the County Court were stayed pending the decision of the Tribunal.

The Hearing – 15 August 2024

4. The first Applicant, Joanna Boylett, appeared in person. The second applicant, Anthony Green, provided the Tribunal with medical evidence and asked to be excused. Joanna Boylett confirmed that she was representing both herself and Anthony Green, and the Tribunal accepted this and excused the attendance of Anthony Green.
5. The Respondent did not appear, was not represented and did not provide the Tribunal with any explanation for non-attendance. The Tribunal waited until 10.15am (the hearing was listed to start at 10am), however neither the Respondent nor their representative attended.
6. The Tribunal considered rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 – hearings in a party's absence, as well as rule 3 – the overriding objective. The Tribunal was satisfied that the Respondent was aware of the hearing and had been notified of the hearing date.
7. In particular, the Respondent had been served with the Tribunal's directions of 9 April 2024 which specified the hearing date of 15 August 2024. The Tribunal noted that the Respondent sent an email dated 17 April 2024 which simply stated that the hearing date was not one available to the Respondent but no further explanation was provided. The Tribunal further noted that since sending that email, the Respondent had made an application to the Tribunal that sought to require the Applicant to provide a revised statement of case. In determining that application and by order of 12 June 2024, the Tribunal had stated that parties must comply with the directions issued on 9 April 2024 and had reminded parties that if further or amended directions were required they should apply in form Order 1. No application to change the hearing date had been received from the Respondent and the Tribunal noted that the Respondent had not complied with the Tribunal's directions that required the Respondent to specify their case.
8. The Tribunal was therefore satisfied that it was in the interests of justice to proceed with the hearing as the hearing date had been set, the Respondent was aware of it and had not applied to the Tribunal to change the date. The Respondent had provided no explanation for non-

attendance and further had not complied with the Tribunal's directions. The Tribunal was satisfied that if the matter did not proceed in the Respondent's absence there would be delay, which was not compatible with the Tribunal's duty to deal with cases fairly and justly, avoiding delay, so far as compatible with proper consideration of the issues.

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

The Background

10. The Property which was the subject of this application was a two storey house that had been converted into four flats, with a communal garden.
11. The Respondent had ceased to manage the Property on 5 September 2022 when 141 Croydon Road Right to Manage Company Ltd had taken over the management on 6 September 2022.
12. The Applicants held a long lease of the Property which required the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge.

Documents before the Tribunal

13. By directions dated 9 April 2024 and amended on 30 May and 5 July 2024, the Applicants were required to provide details of their case by 13 May 2024 and the Respondent was to provide details of their case by 15 July 2024.
14. The Tribunal had before it a bundle consisting of 340 pages prepared by the Applicants. However, the Respondent had not provided the Applicants or the Tribunal with any documents.

The Issues

15. The issues before the Tribunal were the payability and/or reasonableness of service charges for the years ending September 2022 and September 2023.
16. A schedule of disputed charges for the service charge years had been prepared by the Applicants (pages 96 to 120 of the Bundle) which clearly set out the issues in dispute. The Applicants had entered their comments into the schedule, however, no comments had been submitted by the Respondent.

17. The Tribunal considered each item specified in the Schedule and made its findings under those headings by considering the documentation provided in the bundle and hearing submissions at the hearing.

Accurate Service Charge Account September 2021/2022

18. The Applicants stated that the service charge account was inaccurate as 141 Croydon Road Right to Manage Company Limited had taken over the right to manage from 6 September 2022 whereas the service charge account appeared to be for the period 30 September 2021 to 29 September 2022. The Applicants said this because at page 158 of the bundle, the accounts produced by Martin and Heller (chartered accountants) were titled “service charge account for the period ending 29 September 2022”. However, at the foot of the page, Martin and Heller had certified that the service charge period ended on 5 September 2022.
19. The Applicants further stated that they had tried to clarify this with the Respondent but they did not receive a reply.

Tribunal’s Decision and Reasons - Accurate Service Charge Account September 2021/2022

20. The Tribunal was disappointed to note that the Respondent had not clarified the period that the accounts related to when asked by the Applicants as this could have ended any uncertainty.
21. The Tribunal considered the documentation provided by Martin and Heller, chartered accountants, at page 158 of the bundle. Whilst the heading at the top of the page stated “service charge account for the period ending 29 September 2022”, the actual certification at the foot of the page stated:

“We certify that the above statement of service charges expenditure for the period ended 5 September 2022 in respect of this property [141 Croydon Road]...”

This certification was signed by Martin and Heller chartered accountants and was dated 5 September 2022.

22. In light of the date of 5 September 2022 being stated within the certification, and the date the statement was signed and dated being 5 September 2022, the Tribunal was satisfied that the service charges covered the period up until 5 September 2022. The Tribunal was therefore satisfied that the accounts related to the correct period up until the point when the RTM company took over the management.

Bin Cleaning - £1,339.80

23. The Applicants stated that there was no consultation on this service charge, though it appeared to have been intended to become a regular service charged annually. The Applicants maintained this because this item also appeared on the following year's estimated service charge. The Applicants stated that consultation was required because it was a charge of more than £250 for each of the four leaseholders.
24. Further, the Applicants stated that the bin cleaning service was not necessary and was excessive. There were only three 240 litre wheelie bins, 3 food recycling containers (approximately 55 litres), and 6 recycling crates (approximately 72 litres). (A photograph of the relevant bins was provided at page 186 of the bundle). Additionally, the Applicants stated that the frequency of the cleaning (believed to be twice in one year as that was the number of stickers placed on the bins by the cleaning company) was excessive.
25. In oral evidence to the Tribunal, Joanna Boylett stated that the inside of the bins were not cleaned as they had not been emptied because the residents had not been told that the bins were being cleaned.
26. Finally, the Applicants stated that the bin cleaning service was not set out in the previous year's estimated service charge account.
27. The Applicants provided the Tribunal with a comparative quote from the Checktrade website and from this stated that the total cost should be not more than £240 for a monthly clean on a year contract or a total of £100 for two individual cleans in a year (£50 per visit - £9.99 per bin visit, plus £19.98 to clean 3 food containers and £19.98 to clean 6 crates per visit). The details of this quote were provided at pages 187 to 191 of the bundle.

Tribunal's Decision and Reasons - Bin Cleaning - £1,339.80

28. The issue of payability was not disputed and therefore the Tribunal considered the reasonableness of the charge.
29. The Tribunal accepted the evidence of the Applicants and found that the charge was excessive. The comparable quotes provided by the Applicants demonstrated that the charge was high and the fact that the tenants were not told that the cleaning was taking place meant that they did not receive the benefit of having the inside of their bins cleaned as the bins already had rubbish inside them.
30. The Tribunal did not accept that the service charge needed consultation as the cleaning only related to one year and there was no evidence before the Tribunal that this cleaning service was contracted on a continuing basis.

31. The Tribunal used its own knowledge and expertise and determined that a reasonable charge for cleaning 9 bins would be £3.99 per bin. This meant that the charge for the bins to be cleaned twice per year would be £72. The Tribunal therefore substituted this amount for the amount charged by the Respondent.

Surveyor Report for Preventative Maintenance Schedule - £690

32. The Applicants submitted that the report was not necessary. The report was delivered on 29 October 2021, however on 15 October 2021 the 141 Croydon Road RTM Company Limited had served notice on the Respondent to acquire the Right to Manage.
33. Further, the Applicants submitted that the Respondent or their agent had never produced a report like this before and so did not understand why this was being produced now, especially in light of the RTM notification. Additionally, many of the items included within the report were unnecessary in light of the fact that Eagerstates had inspected and charged for works that were identified in recent prior years. By way of example the Applicants submitted that in 2021 the service charge had included drains inspection and drains CCTV, gutter cleaning and in 2020 had included drain service and repair, chimney works & external works including rebuilding a section of the front boundary wall. Finally, the Applicants submitted that the report had not been necessary because much of the work that was said to be needed in the report was already specified as required in the lease meaning that the report did not provide any new information.
34. The Applicants stated that they did not consider that any charge for this report was reasonable.

Tribunal's Decision and Reasons - Surveyor Report for Preventative Maintenance Schedule - £690

35. The Tribunal considered the report which was contained at pages 192 to 200 of the bundle. Whilst the Tribunal accepted that a report of this nature had not been completed before, the report provided the Respondent with information about the Property prior to the RTM company taking over. Additionally, for the RTM company, it would have provided a report that set out the preventive maintenance needed in future.
36. Given this finding, the Tribunal accepted that the report was necessary, and, using its professional judgement, found that the charge of £690 was reasonable for a report of this nature. The Tribunal therefore found that this charge was payable and reasonable.

NIECC Inspection - £234

37. The Applicants confirmed that they were not shown any reports in relation to this work and were given no explanation. The Applicants therefore did not consider any charge was reasonable.

Tribunal's Decision and Reasons - NIECC Inspection - £234

38. There was no evidence before the Tribunal that this inspection had been completed. In the absence of any invoice, the Tribunal found that this charge was not reasonable.

Fire Boarding, Fire Sealant etc - £725

39. The Applicants told the Tribunal that they were not given an explanation of this work and they did not know why it was necessary. Further, they did not know where the work was carried out in the Property.
40. Further the Applicants stated that extensive and repeated work on fire and electrical safety had been charged in previous years and so the Applicants questioned whether this work was necessary or was actually completed.

Tribunal's Decision and Reasons - Fire Boarding, Fire Sealant etc - £725

41. The Tribunal accepted the evidence of the Applicants. There was no information before the Tribunal to explain what this work was and further, the Tribunal accepted the evidence of the Applicants that they did not know where in the Property this work was completed.
42. The Tribunal did not have any invoice or evidence before it of what was involved in this work or that it was completed. The Tribunal therefore did not find this charge reasonable and disallowed it.

Electrical Cupboard Door Adjustment - £259.20

43. The Applicants told the Tribunal that in the 2020-2021 service charges they had paid for extensive work to the electrical cupboard. Additionally, the same work that was claimed to have been completed in 2020-2021 had also been carried out in 2017.
44. The Applicants therefore did not believe that this work was necessary or even completed. They therefore did not consider any charge reasonable.

Tribunal's Decision and Reasons - Electrical Cupboard Door Adjustment - £259.20

45. The Tribunal accepted the evidence of the Applicants. Included in the bundle (at page 229) was a photograph of the cupboard, however it was not possible to identify any work completed from that photograph. There was no invoice or evidence before the Tribunal relating to this work. Further the Tribunal noted that at page 231 was a notice of intended work dated 14 January 2017 and that related to work on the ground floor electrical cupboard. Additionally, at pages 248-249 of the bundle were details of the work that was completed in 2020. The Tribunal therefore found that there was no evidence before it of the work being completed and chargeable in the service charge year ending September 2022. The Tribunal therefore disallowed this amount.

Electrical Works as per Section 20 Notices to pass NIECC - £1,776

46. The Applicants told the Tribunal that no Section 20 notices were received from the Respondent or their agent in relation to this work. There was also no consultation and no detail of the work done. The Applicants therefore asserted that the work had not been completed.

Tribunal Decision and Reasons - Electrical Works as per Section 20 Notices to pass NIECC- £1,776

47. The Tribunal accepted the Applicants' evidence that a Section 20 notice had not been served and further the Tribunal was not satisfied that the work had been completed. The Tribunal was not provided with any invoices or any evidence of work that was completed to justify this charge. The Tribunal therefore disallowed this amount.

Portion of Management Fee for Period September 2021/2022 – £904.32

48. The Applicants stated that if the Tribunal upheld their challenges to the service charges, the amounts payable would change and that would mean that the agent's fee of 15% (inclusive of VAT) would also need to be amended.

Tribunal Decision and Reasons - Portion of Management Fee for Period September 2021/2022 - £904.32

49. There was no dispute that a management fee was payable or that 15% was a reasonable fee. The Tribunal found that 15% inclusive of VAT was a reasonable charge for an agent's fee, but accepted the position of the Applicants that the fee would need to be recalculated if the service charge amount was reduced by the Tribunal.
50. The Tribunal considered the agent's fee and noted that the agent's fee as set out in the certified service charge accounts (page 162 of the bundle) appeared in any event to be incorrectly calculated. The Tribunal

therefore calculated the amount of service charge payable following the Tribunal's findings and recalculated the agent's fee at 15% as follows:

Service Charge Account September 2021/2022

Item	Cost £
Insurance October 2021/2022 +brokers fee	2,276.38
Common parts electricity	752.46
Common parts cleaning	1,117.72
Gardening	1,353.84
Monthly testing of emergency lighting and smoke detector	406.56
Window cleaning	284.40
Bin Cleaning	72.00 (as substituted by this Tribunal)
Surveyors report for preventative maintenance schedule	690.00
Fire Health and Safety Services	246.00
Locksmith call out	110.00
NIECC Inspection	Disallowed by this Tribunal
Fire health and safety risk assessment	408.00
Carpet Cleaning	138.00
Fire Boarding, Fire Sealant etc	Disallowed by this Tribunal

Electrical Cupboard door adjustment	Disallowed by this Tribunal
Stake Pipe Leak repair	650.00
Fire Door Inspection	63.36
Gutter cleaning	102.00
Electrical works as per section 20 notices to pass NIECC	Disallowed by this Tribunal
Sweep of Electrics	102.00
Accountants Fee	630.00
Total	9 687.12
Agents fee inc of VAT (15%)	1 453.07
Total expenses	11 140.19

Payment under Protest

51. The Tribunal noted the evidence of the Applicants that payment under protest in relation to this service charge year had been made. Given the amount payable had been reduced by this Tribunal, any refund due to the Applicants should be made by the Respondents within 28 days of the date of this decision.

Estimated Service Charge Account September 2022/2023 - £14,732.53

52. The Applicants pointed out that as the 141 Croydon Road RTM Company Limited had taken over the Property on 6 September 2022 this charge was not payable.

Tribunal's Decision and Reasons - Estimated Service Charge Account September 2022/2023 - £14,732.53

53. The Tribunal found that this charge was not payable given that the 141 Croydon Road, London RTM Company Limited had taken over on 6 September 2022. The Tribunal noted in particular the decision of the First-tier Tribunal dated 6 June 2022 (case reference LON/00AF/LRM/2022/0001) which confirmed the 141 Croydon Road, London RTM Company Limited entitlement to acquire the right to manage the Property, and confirmed that the RTM company would acquire the right to manage within three months of the Tribunal's determination becoming final. The Tribunal therefore found that this amount was not payable.

Disputed Service Charges – Year end September 2023

54. The Applicants produced a schedule at pages 106 to 120 of the bundle which set out the charges that the Respondent had claimed for this period. The Tribunal considered the charges that fell within its jurisdiction to determine the payability and reasonableness of service charges under the headings set out in the schedule as follows.

Administration Fee for Rent Collection - £60

55. The Applicants stated that a fee of £60 had been levied for both Flat A and C as an administration fee for rent collection. This fee had not previously been charged and the Applicants submitted that there was no provision in the lease for this to be charged. In any event, the Applicants stated that the amount was disproportionate to the work involved in collecting £150 ground rent per year.

Tribunal's Decision and Reasons - Administration Fee for Rent Collection - £60

56. The Tribunal was not satisfied that there was any provision in the Lease for this administration fee to be charged. Further the Tribunal found that in any event, even if such a fee were payable, it would be unreasonable in amount given that the ground rent was £150 per year. The Tribunal therefore disallowed this amount.

Charges Initially Listed in Correspondence – £953.29

57. The Applicants stated that both Flats A and C had been charged £953.29, however no details were supplied as to what this amount related to.
58. At page 282 of the bundle was an email in which Joanna Boylett set out her understanding that £953.29 was outstanding from a “previous account”. Joanna Boylett told the Tribunal that the only previous

account that she had not paid was the estimated service charge account for September 2022/2023 and that this was because the RTM company had taken over from 6 September 2022 and so no service charges were owing to the Respondent. The Applicants believed that that previous year's service charges up to 5 September 2022 had been paid in full.

59. Additionally, the Applicants stated that the Respondent had ignored a request for itemised handover information which had been sent to the Respondent on 14 October 2022 (page 291 of the bundle).

Tribunal's Decision and Reasons – Charges Initially Listed in Correspondence - £953.29

60. The Tribunal did not understand the charge of £953.29. The amount that the Tribunal determined payable for the service charge year ending September 2022 is set out in the table at paragraph 50 above, and in relation to the Service charges ending September 2023, the Tribunal found that no service charge was owing to the Respondent for the service charge year 2022/23 given that the RTM company had taken over on 6 September 2022. The Tribunal therefore found that this amount was not payable.

RTM Handover balance - £3,391.28

61. Whilst not specifically itemised within the schedule, for the avoidance of doubt, the Tribunal found this handover balance to be not payable. At page 309 of the bundle was a letter before action dated 27 November 2023 written to Joanna Boylett which included “£1,192.28 RTM handover”. However, no details were provided by the Respondent to confirm what this related to. The Tribunal has already made findings in relation to the amounts payable for the service charge year 2021/22 and has not found that any amount of service charge was payable for 2022/23. The Tribunal therefore found that this handover balance was not payable.

Remaining Charges in Relation to Flat C as set out in the Schedule for September 2022-2023

62. Further charges were contained within the schedule in relation to Flat C as follows:

£1,402.28 marked as “amount outstanding from previous account” – received 31 August 2023

£1,522.28 – Notice of Proceedings dated 9 October 2023

£508.99 – Notice of Proceedings

£628.99 – Notice of Proceedings dated 13 November 2023 (page 307 of the bundle confirmed that this is £508.99 plus the Respondent’s costs of £120)

£1,825.99 – letter before action

£2,455.99 – letter from mortgage lender – landlord demand payment

£2,656.99 – civil money claim 48MC893.

63. The Tribunal’s jurisdiction is limited to the payability and reasonableness of the service charges and matters of costs are for the County Court.

64. With that said, the decision of this Tribunal set out the service charges that this Tribunal found payable and therefore given these findings, the Tribunal did not understand the amounts that the Respondent was claiming as set out in paragraph 62 above. For the avoidance of doubt, the Tribunal determined that there were no outstanding service charge payments for the year ending September 2023 given the RTM company had taken over the management of the Property. Additionally, for the year ending September 2022, the Tribunal determined the amount that was payable as set out above. In terms of payments made by the Applicants, their evidence to the Tribunal was that payment for this service charge year had been made under protest. Given that the Tribunal has substituted a lower amount to that charged by the Respondent, the account would need to be recalculated and any payment owing to the Applicants would need to be refunded to them by the Respondent.

Demand made for - Flat A (£508.99 and £1,163.29)

65. The schedule contained two charges that were specific to Flat A namely £508.99 which was marked as “charges received as Notice of Proceedings received by post by Anthony Green on 13 October 2023” and £1,163.29 marked as “amount outstanding from previous account”.

66. This Tribunal found that no service charges were payable for the service charge year ending September 2023 and therefore found that the amounts claimed by the Respondent were not payable.

67. Whilst this Tribunal limits itself to consideration and payability of the service charge, the Tribunal draws the Respondent’s attention to the statement made by Anthony Green in which he explained that the Respondent paid in three cheques that he sent them and therefore has overpaid the Respondent.

68. The sequence of events was that on 2 October 2023 Anthony Green made a payment by cheque for £1,163.29. This appeared to relate to £953.29, which was described as outstanding amount from previous account. For the avoidance of doubt, this Tribunal has found that this was not payable. The £1,163.29 also included £60 admin fee for rent collection, which again this Tribunal has found not payable. The remainder was £150 yearly ground rent, which was not disputed and was payable.
69. Anthony Green stated that on 13 October 2023, he had received a “Notice of Proceedings” dated 9 October 2023 demanding payment of £508.99. Anthony Green in his written statement told the Tribunal that because the notice threatened repossession proceedings and because he had feared that the cheque he had already sent may have been lost in the post, Anthony Green had sent a second cheque for £1,163.29. Anthony Green stated that he had telephoned Eagerstates on 16 October 2023 to confirm that they had received the second cheque for £1,163.29. Eagerstates confirmed that they had received the second cheque but also asked that a further cheque for the amount demanded in the Notice of Proceedings for £508.99 be paid. Anthony Green had then sent a further cheque for £508.99. Anthony Green confirmed that he had checked his bank statement and all three cheques sent to Eagerstates had been presented by the Respondent. This meant that Anthony Green had paid £1,163.29, £1,163.29 and £508.99.
70. Anthony Green had therefore not only paid sums that were not owed, but had also made duplicate payments. The Respondent must therefore review Anthony Green’s account and other than taking the £150 ground rent, refund the amount that has been overpaid as this amount did not represent a payable service charge.

Ground Rent – Year ending September 2022 and September 2023

71. Whilst ground rent does not ordinarily form part of the Tribunal’s jurisdiction, it is relevant to this matter because the Applicants asserted that the Respondent incorrectly apportioned the money paid as ground rent to the service charge account.
72. It was the Applicants’ position that Eagerstates misapplied the ground rent to the “estimated service charge account September 2022/2023”, despite the fact that Eagerstates ceased to manage the Property on 5 September 2022 when the RTM company took over the right to manage.
73. Joanna Boylett confirmed in her evidence to the Tribunal that on 26 September 2022 she had paid £150 annual ground rent by bank transfer, marking it as ground rent payment. She stated that she had also made a separate payment under protest for the 2021/22 service charge account. Joanna Boylett confirmed that she had sent an email to Eagerstates on 26 September 2022 to confirm the payments she had made, setting out

that one payment was ground rent and the other was a payment under protest for the 2021/22 service charges.

74. Joanna Boylett told the Tribunal that on 28 September 2023 she had paid the ground rent for the period 2023-2024 by bank transfer.
75. Joanna Boylett told the Tribunal that, on 17 October 2023, she had received an email from Shoshi Goldstein of Eagerstates that had shown that the ground rent payment made on 26 September 2022 for the period 2022-23 had been allocated as £150 towards service charges for the 2022/2023 account. The ground rent payment that Joanna Boylett had made on 28 September 2023 had been allocated to the ground rent payment for the ground rent for 2022-23.
76. It was therefore Joanna Boylett's position that £150 ground rent had been incorrectly allocated to the service charge payment for 2022/23 and the rent for 2023/2024 had incorrectly been allocated as ground rent for 2022/23.
77. Given that the Tribunal found that the estimated service charges for September 2022/2023 were not payable, and given that the Applicant had sent payment for ground rent clearly marked as such, the Tribunal did not understand why the Respondent stated that the ground rent due in September 2022 was outstanding.
78. The Tribunal found that the Respondent must ensure that no payments made for ground rent are incorrectly included as credits within the service charge accounts. The service charge accounts must be reconciled by the Respondent in line with the findings of this Tribunal.
79. In relation to the ground rent payment for Flat A, the Applicants stated in the schedule that the payment for ground rent for September 2022-2023 was made in late September 2022. This amount should therefore not be credited to the service charge account but instead be credited as ground rent.
80. In relation to the ground rent payment for 2023/24, as noted at paragraphs 67-70 above, Anthony Green told the Tribunal that this payment was made as part of the demands that were incorrectly made by the Respondent. The Respondent's accounts should be amended to ensure that ground rent is properly marked as paid and not credited to a service charge account.

Summary of Decision

81. In relation to the service charge year September 2021 to September 2022 the Tribunal found the following amount payable:

82. Service Charge Account September 2021/2022

Item	Cost £
Insurance October 2021/2022 +brokers fee	2,276.38
Common parts electricity	752.46
Common parts cleaning	1,117.72
Gardening	1,353.84
Monthly testing of emergency lighting and smoke detector	406.56
Window cleaning	284.40
Bin Cleaning	72.00 (as substituted by this Tribunal)
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Locksmith call out	110.00
NIECC Inspection	Disallowed by this Tribunal
Fire health and safety risk assessment	408.00
Carpet Cleaning	138.00
Fire Boarding, Fire Sealant etc	Disallowed by this Tribunal
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Stake Pipe Leak repair	650.00
Fire Door Inspection	63.36
Gutter cleaning	102.00
Electrical works as per section 20 notices to pass NIECC	Disallowed by this Tribunal
Sweep of Electrics	102.00
Accountants Fee	630.00
Total	9 687.12
Agents fee inc of VAT (15%)	1 453.07
Total expenses	11 140.19

83. Each property was responsible for 25% of the total expenses.
84. In relation to the Service Charge Year September 2022 to 2023, the Tribunal found that because of the RTM company taking over the management on 6 September 2022, there were no service charges payable to the Respondent for this period.
85. The Tribunal accepted the evidence of the Applicants that they had paid the service charges for the 2021 to 2022 service charge year (under protest) and that Anthony Green had paid the estimated charges for 2022 to 2023 which the Tribunal did not find payable.
86. In light of these findings, the Tribunal did not understand how the Respondent calculated the fees and charges on amounts that they said were outstanding. The Tribunal's jurisdiction is limited to the payability of service charges and so this matter will be returned to the County Court. In particular the Tribunal asked the County Court to consider the following issues:
- (i) Any over payment made in light of the Tribunal's findings.

- (ii) The issue of costs and fees payable in light of the Tribunal's findings

Application under s.20C and refund of fees

87. The Applicants made an application for a refund of the fees that they had paid in respect of the application/hearing. Having heard the submissions and taking into account the determinations above, the Tribunal ordered the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.
88. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Having heard the submissions and taking into account the determinations above, the Tribunal determined that it was just and equitable in the circumstances for an order 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. The Tribunal also found it just and equitable to make an order that the Applicant tenants shall not be liable to pay an administration charge in respect of litigation costs (paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002).

The next steps

89. The Tribunal has no jurisdiction over ground rent or County Court costs. This matter should now be returned to the County Court so that these matters can be settled.

Name: Judge Bernadette MacQueen **Date:** 16 September 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).