FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**CAM/12UD/LSC/2023/0022 & 0003**
Property	:	**5 &6 North End, Wisbech, Cambs PE13**
Applicant	:	**Stephen Hudson and others**
Represented by		**Corinne Tuplin, ProLeagle**
Respondent Landlord	:	**Assethold Ltd**
Represented by	:	**Mr Skeate of Counsel**
Type of application	:	**Application for payability and reasonableness of service charges, pursuant to s.27A Landlord and Tenant Act 1985; counter application for dispensation**
Tribunal	:	**Tribunal Judge Stephen Evans** **Mr Roland Thomas FRICS**
Date of hearing	:	**25 to 27 June 2024**
Date of decision	:	**23 September 2024**

DECISION

The Tribunal determines that:

(1) Subject to (4) below, the majority of costs incurred by the Respondent were not costs reasonably incurred and/or were unreasonable in amount, as set out in detail in paragraphs 51 to 372 of this decision.

(2) If and in so far as the Respondent has demanded service charges from Mr and Mrs Hudson in relation to flats 5A and 5B for any period before their acquisition of their leasehold interest on 13 October 2022, those sums are not payable.

(3) No administration charges are payable by Mr and Mrs Hudson.

(4) While any county court judgments in default remain in relation to any flat owned by Mr Housden, the Tribunal does not have jurisdiction to determine any service charges which such judgments cover.

(5) No order under s.20C of the Landlord and Tenant Act 1985 and paragraph 5A of CLARA is required, the Respondent conceding that it cannot and will not recover the costs of these proceedings through the service charges or as an administration charge.

REASONS

Introduction

1. By applications dated 9 June 2023 the Applicants seek a determination as to reasonableness and payability of service charges; and an order pursuant to para 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("CLARA").

2. In this decision references in square brackets [ ] refer to pages in the hearing bundle. References in curly brackets { } are to pages in the CMC bundle.

The Property

3. There are 9 Flats in the building.

4. There has been no inspection of the Property, nor did any party or the Tribunal consider one necessary.

The Leases/ Parties

5. The Respondent is the landlord under the leases.

6. The Lessees of each of the Flats have been as follows:

Flat No	Lease date	Leaseholder (successor in brackets)	Sch 3 para 2 service charge year end	Sch 3 para 1 share/ proportion
5A	5.1.90 [544] 6.1.14 [962]	Pearce & Blatch (Blake) (Hudson)	25 Dec	1/8 [956] 1/9 [963]
5B	27.4.89 [964] 5.12.07 [983]	Hicks (Hudson)	25 Jun	1/6 [977]
5C	26.9.11 [985]	Housden & Housden	25 Dec	"an equal share" [999]
5D	19.3.90 [1005]	Chapman (Housden)	25 Dec	1/10 [1017]
5E	12.1.90 [1023]	Clayton	25 Dec	1/10 [1036]
5F	12.11.04 [1041]	Field	25 Dec	1/9 [1055]
6A	20.6.89 [1062]	Pembery & Bagshaw (Wharton)	25 Dec	1/8 [1075]
6B	23.10.89 [1089] 31.7.98 [1117]	St. John (Housden)	25 Dec	1/8 [1093]
6C	22.3.91 [1119]	Carr (Griggs)	25 Dec	1/8 [1132]

7. By clause 3.2 of the leases the lessee is required to pay a service charge in accordance with the 3rd Schedule, on the dates stated above.

8. The Landlord's covenants are contained in clause 4. This includes an obligation to perform the services in the 5th Schedule.

9. The 3rd Schedule defines "service charge costs" and gives the "final service charge" share/ proportion (as per the table above).

10. It also provides, at para 2:

"the landlord must

(a) keep a detailed account of service costs

(b) have a surface charge statement prepared for each period ending on the 25th day of December during the lease. Which:

(i) states the service costs for that. With sufficient particulars to show the amount spent on each major category of expenditure

(ii) states the mount of the final service charge

(iii) space the total of the interim service charge instalments paid by the tenants

(iv) states the amount by which the final service charge exceeds the total of the interim charge instalments…

(v) is certified by a member of the institute of Chartered Accountants in England Wales that is a fair summary of the service costs, set out so that it shows how they are or will be reflected in the final service charge, and is sufficiently supported by accounts, receipts and other documents which have been produced to him."

11. The 5th Schedule includes at para 6 "repairing and maintaining those services in the building and its grounds which serve both the property and other parts of the building."

The Application

12. The Applicants challenge 7 years of service charges, from 2017 to 2023.

13. The Applicants also contend a lack of certification of accounts.

The Hearing

14. The hearing took place over 3 days. Ms Tuplin of ProLeagle represented the Applicants, Mr Skeate of Counsel for the Respondents.

15. The allegations and arguments raised by the Applicants were wide-ranging and at times unfocused. The Applicants wanted a complete audit of service charges, which is not our practice. The Applicants vehemently complained of missing documentation. Time was lost during the hearing by argument over whether documents had or had not been disclosed.

16. The Tribunal notes that the Applicants had, rarely in our experience, sought to appeal a case management decision (unless order of Judge Wyatt of 14 March 2024 [415]). We note and concur respectfully with UT Judge Cooke that this Tribunal has made a strenuous effort to bring these proceedings to a point where there can be a hearing [426].

Determination

17. There are a number of overarching issues which the Tribunal must still decide, before proceeding to the Scott Schedule items.

18. The first is the issue which the Applicants have continued to press, regarding debarment of the Respondent for alleged non-compliance with directions of the Tribunal. The Applicants at the hearing sought debarment of the Respondent from defending the application, following alleged non-compliance with an unless order dated 14 March 2024. The Applicants' submissions are set out in detail in its skeleton argument, and we do not repeat them in full, but in short, they contend that the witness statement from Mr Gurvits for the Respondent does not satisfy the unless order, that insufficient disclosure has been given, and that the consequences are that the sanctions should be opposed immediately, and that the Respondent has no defence to any of these allegations.

19. The Respondent contends that the trial bundle does not contain all the information which was provided in the exhibits to Mr Gurvits statement, or in the case management bundle, and in any event they should be granted relief from sanctions granted because, although some breach is probably likely, it

would be wholly disproportionate now to debar the Respondent; there has been very substantial compliance and no prejudice to the Applicants; the proceedings have reached the stage of being dealt with at a fully contested hearing, and if the Respondent has not produced an invoice to support a cost, the Tribunal will no doubt take that into consideration when deciding the merits of the case. The Respondent also points to poor conduct on the part of the Applicants, including their failure to put some of the documents into the hearing bundle; the manner in which they have conducted and brought the case has meant that there has been some confusion as to what has and has not been disclosed. It would be unjust and unfair for the freeholder not to be able to recover some service charges on any view, and it in any already wide ranging case; accordingly debarment would be a complete windfall for the Applicants.

20. By email dated 28 June 2024 to the Tribunal the Applicants wrote to the Tribunal, accepting that some documents had been missed out of the hearing bundle.

21. The decision of the Tribunal is to grant relief from sanctions. Our starting point is the overriding objective in Rule 3 (the overriding objective) of the Tribunal Procedure Rules, which is simply to enable the Tribunal to deal with cases fairly and justly: rule 3(1). There is then a non-exhaustive list of inclusions in rule 3(2). One of those is proportionality. Another is avoiding unnecessary formality. Yet another is enabling parties to participate fully in the proceedings. Rule 3(3) requires the Tribunal to give effect to the overriding objective when it exercises any power under the rules. The relevant rule here is rule 9, which gives the Tribunal a discretion under rule 9(7) to debar a Respondent, and also to lift the bar.

22. In our determination, the Respondents point about the stage at which proceedings have reached, and that there has been substantial compliance, weigh in its favour. In addition, a witness statement has been provided by Mr Gurvits, and the Tribunal can assess the weight to be given to that. It would be wholly disproportionate for the Tribunal now to spend time picking through each and every line on the Scott schedule (over 120 items) to see whether or not every single one is a document which had been disclosed by the Respondents at some stage. As will be seen from our determination below, there are several documents the Applicants have not carried over from the CMC bundle and Mr Gurvits' documents. There remains force in the point that if a document has not been provided by the Respondent supporting an invoice cost, and no other reasonable explanation, that will work in the Applicants' favour. We accept the Applicants' point, naturally, the rules are there to be complied with, and normally this would lead to the imposition of the sanction. We also accept that the Respondent's explanation for its breach is not strong. However, the Tribunal is not persuaded the breach is so serious or significant that fairness requires the sanction to remain in place at a final hearing. The Applicants have continued after 14 March 2024 to marshal their evidence and to make all necessary submissions, in considerable detail and no doubt at considerable cost.

23. Accordingly we determine that the fair, just and proportionate way to proceed is to decide that, if and to the extent the sanction under the unless order has taken effect, they Respondent is granted relief from that sanction and a lifting of the bar, pursuant to rule 9(5) and (7)(b) of the 2013 rules.

24. To bring further proportionality, however, we determine this case on the basis of the following only: the trial bundle (1247 pages), the documents in the CMC bundle (509 pages), and the documents attached to Mr Gurvits statement (provided during the hearing, by cover of email on 27 June 2024 at 15:56).

25. The second general issue is alleged non-compliance by the Respondent with the service charge mechanism in the lease. Again, the Applicants arguments are set out in detail in its skeleton argument. In summary, it is contended:

    (a) The Respondent did not produce service charge demands ending 25 December;
    (b) It did not request the interim payments on the correct days
    (c) It overcharged 1 flat every year
    (d) It concealed commission on building insurance
    (e) It added non contractual charges on flat 5 and 5B when they were purchased in October 2022.
    (f) It did not reimburse leaseholders at the point of giving the final service charge demand, and did not keep a record of the accounts of service costs
    (g) it did not have final accounts properly certified by an accountant.

26. In relation to (g) above, the Applicants contend that the document which purports to be a certification document [828] is not signed by an actual chartered accountant, but simply bears the name Martin and Heller, the accountant for the Gurvits family. Moreover, it is said to be generic, and not addressed to an individual flat.

27. The Applicant relies on *Powell & Co v Aleksandrova* [2021] UKUT 10 (LC) as authority for the proposition that the general function of the certificate is to provide confirmation of the facts relevant to the obligation of a party under the contract; and assurance to the paying party that an independent person has satisfied themselves that the facts being certified are true. Martin Heller are not independent, the Applicants contend.

28. The issue here, the Applicants argue, is that the Martin & Heller documents (e.g. at [828]) may have been stated to relate to the service charge year ending 25 December, but each of the demands was dated in early December of each year [429, 430, 466, 514, 557, 593, 661, 825].

29. The Tribunal was also referred to *Akorita v Marina Heights (St.Leonards) Ltd* [2011] UKUT 255 (LC). In that case, the lease required the service charge to be due and payable on demand and the amount of the service charge to be ascertained and certified by the lessor's surveyor acting as an expert and not as an arbitrator. The issue in that case was whether a provision of a certificate

by the lessor's surveyor was a condition precedent to liability to make payment. The UT held that it was for the tenant to persuade the Tribunal that the lease on its true construction does indeed lay down a condition precedent to liability (para 12). The UT also held that it was clear on the proper construction of the lease that it was a condition precedent to any liability of the lessee to make payment either on the interim service charge or by way of final balancing service charge payment that the Respondent had obtained a *surveyor's* certificate certifying the amount of the payment. That is what the clause plainly stated (para 19). The certificate had instead been provided by *accountants*, and there was no evidence did the accountants were provided with any form of certificate by any surveyor supporting the appropriateness of the amounts demanded. (para 20). The Upper Tribunal therefore concluded that, in respect of each of the service charges with which it was concerned, the amount payable by the tenant was at present nothing, because the condition precedent to liability had not been fulfilled; adding that there was a possible argument if the Respondent obtained a new certificate for each of the years and made fresh demands, then the service charges might become payable, subject to any s.20B argument (para 21).

30. In the instant proceedings, Mr Skeate for the Respondents contended that each case turns on its specific wording of the lease, and it is plain that the tenant must show that a condition precedent applies. That, despite the use of the word "must", each of the sub-paragraphs in paragraph 2 of the 3rd schedule are disjunctive and are not conditions precedent.

31. The Respondent also maintained that each of the years' certificates had been in the same format as [828]. The demands may have been signed by Eagerstates, but they had to be read in conjunction with the Martin Heller summary of service charges.

32. The Respondent relied on *Joachim v Warrior Quay Management* (LRX/42/2006), not only as authority for the proposition that there has to be clear wording for a condition precedent, but also that one needs to consider the mischief to which the clause is directed. Moreover, in the instant case, the Respondents contend that the hearing itself has provided an opportunity for what is, in effect, an audit of all service charges imposed since 2017.

33. In the Tribunal's determination, the Applicants have not persuaded the Tribunal that the lease contains conditions precedent to payment of liability. The leases do not expressly state that certification is a condition precedent. The use of the word "must" does not alone assist the Applicants. Reading the clauses in their full context, the mischief to which the clauses are directed is that a leaseholder may not have sufficient information about the charges before a rent day on which payment is required.

34. The Applicants have had, for the last 7 years, a summary in the form of [828] signed by a firm of accountants, which certified it was a fair summary of the service charge expenditure for the year ending 25 December, ending with "in our opinion a fair summary of the landlord's relevant costs for that period and

is sufficiently supported by accounts, receipts and other documents which have been produced to us." The certifier therefore had the 3rd schedule, paragraph 2(v) squarely in mind. We are prepared to accept Frank Martin FCA and Adrian Heller FCA hold the qualifications which they profess, and that they are "registered to carry out audit work in the UK by the institute of Chartered Accountants in England and Wales" as their statement professes [828].

35. It is true that the Applicants did not have such a document at the time of each demand, but there is no evidence of any prejudice, given that payment was not required by the demands made in early December until 25 March of the following year. See for example [429-430]. This system worked efficiently, without any obvious disadvantage to the Applicants for years until their solicitor raised it. The mischief was avoided. We do not need to go as far as the Respondents asked, to find a customary course of dealing which waived any formal requirements of the lease.

36. We do not consider that Martin Heller lacked independence (see further below).

37. As for alleged overpayment of service charges, we consider the Respondent is entitled to charge the fraction/proportion expressly set out in the leases (for which see paragraph 5 above). The Tribunal cannot interfere with the parties' original bargain. If there has been unjust enrichment of the Respondent, and if the total sums recouped are greater than 100%, there may have been a remedy elsewhere, such as in the civil courts, or under the Landlord and Tenant 1987. That is not for us to judge on this application, or for us to advise. Now that the Applicants have acquired the Right to Manage the Property, such issues may be resolved much more easily, the Tribunal would hope.

38. Having determined the above, we are mindful that the lease proportion for flat 5C is an "equal share". To assist the parties, as there are 9 flats, prima facie we consider 1/9 would be an equal share.

39. We do not consider the remaining objections raised, as set out in (c) to (e) above, to be relevant to the certification issue.

40. The third issue of general application the Applicants ask to be determined is the Respondent's/Eagerstates' connection, and their alleged use of a "buddy network" of contractors. The issue of the connection between the Respondent and the Manager is considered in our findings in relation to the payment of management fees, below. As for the lack of independence of contractors, we are not prepared to make any general finding on this issue, for want of evidence, and the Applicants' skeleton argument reveals that their complaints are primarily about lack of invoices from such tradespeople, a matter to which we will also have careful regard when considering the 120 or so Scott Schedule items, below.

41. The fourth issue of general application is the position of Mr and Mrs Hudson in relation to flats 5A and 5B. They did not purchase those flats until 13 October 2022. They rely on s.23(1) of the Landlord and Tenant Act 1985, to contend that any demands made of them for service charges before that date are not payable by them. The demand of 5 December 2022 is for the whole year [661]. That is wrong, they argue. The Respondent does not address this point in its written materials, and did not do so at the hearing.

42. The Tribunal agrees that, if and in so far as the Respondent has demanded service charges from those Applicants before 13 October 2022, they are not payable by Mr and Mrs Hudson in respect of Flats 5A and 5B. However, the Tribunal cannot easily undertake the apportionment on the materials before it; the parties should seek to agree the necessary apportionment.

43. In addition, Mr and Mrs Hudson contend that they should not have incurred any administration charges imposed by the Respondent, following non-payment of the demands from 2022 onwards, because they are not contractually payable, nor reasonable in amount. We agree with the Applicants on this point. We cannot see there is any express contractual entitlement to administration charges within the lease terms, and it was not reasonable that Mr and Mrs Hudson should have been asked to pay the full amount of service charge for the year ending 2022.

44. The fifth and final issue of general import is the impact of various judgments in default in the civil courts in favour of the Respondent against some Applicants. The Respondent argues that s.27A(4)(c) of the Landlord and Tenant Act 1985 is satisfied: the FTT cannot determine these service charges because they have been the subject of a determination by the court; that unless and until judgments in default are set aside, the court orders should stand, and we do not have jurisdiction to determine payability and reasonableness of service charges.

45. As to the facts, it is agreed by the parties that Mr Wharton had a judgment in default against him, which was later set aside. The Respondent also has CCJs against Flats 5c, 5d and 6b (all owned by Mr Housden). We have seen judgments in default against Mr Housden in 3 claims, K6QZ16Y3 and K6QZ51Y0 dated 15 June 2023, and in 409MC473 dated 23 June 2023.

46. On 18 July 2024 the Applicants informed the Tribunal by email that judgment in claim K6QZ51Y0 against Mr Housden had been set aside by the Peterborough County Court.

47. In *Marlborough Park Services Ltd v Leitner* [2018] UKUT 230 (LC) the UT was dealing with default judgments entered some years before the tenant applied to the Tribunal, with no application to set aside. Even then, HHJ Stuart Bridge seems to have said the Tribunal should strike out applications to the extent they related to actual incurred charges certified under the lease when the judgments for those charges were obtained, so the outstanding debt as ordered must be treated as having been the subject of a determination; but

the FTT had been right not to strike out the application in relation to service charges which related to charges which could not have been certified prior to the default judgments being entered.

48. We agree with the Respondent that while any judgments in default remain, the Tribunal does not have jurisdiction in relation to the service charges which they cover. If those default judgments are later set aside by the court so that the Tribunal has jurisdiction, the service charges payable by Mr Housden for his flats would be as determined by us, below.

49. The picture before us is not clear enough for us to make a more definitive determination. It may be that 2 judgments in default still remain against Mr Housden. Which of his flats are implicated is also unclear, as are the exact service charges which are involved.

50. We now turn to the 120 or so Scott Schedule items.

2017

(1) Building Insurance (1566.06)

51. The Applicants argument is that the premium and broker's fee totalling £1555.06 is not reasonably payable without further documentation, such as the certificate, policy and other material. The Applicants sought a reduction to 40% or 50% of the premium as a result. The Applicants stressed that they had not been able to get information for other service charge years. The commissions, the Applicants argued, were higher than the Respondent admits. They complain that there is no allowance for a broker's fee of £50 in the lease terms. They complain that there was no declaration to the broker that the building is Grade II listed when insurance was placed, because the policy document does not record it.

52. The Respondent's responds: the sum was reasonably incurred to insure the building. The Applicants have not obtained alternative quotes. They have no prima facie case. The certificate of insurance is in the bundle [456], evidencing the premium payable, albeit that is the only document. There is nothing wrong with a broker taking a commission. There is no evidence of a "kickback".

53. The Tribunal prefers the Respondent's arguments. Given the size of the property (9 flats) and the sum insured, the premium does not strike the Tribunal as high. In *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC) the Upper Tribunal held at paragraph 28:

> "Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach."

54. Whilst it might be a breach of lease if the Property is underinsured because its Grade II listed status has not been declared, we need not make any finding on that, within this s.27A application; the likelihood is that, if it was not declared but should have been, the premium would have been higher, not lower.

55. The broker's fee is minimal, and a reasonable disbursement as a cost of insurance. There is insufficient evidence of improper commissions, we find.

56. The sum is allowed in full.

(2) Gardening and cleaning (£1008)

57. The cost of £1008 is challenged, on the grounds that further information should have been provided such as the contract and "paid" invoices. The Applicants say that several leases do not include maintenance of the garden as a service charge item. They say, relying on Mr Housden's evidence, that 3 or 4 visits a year would be sufficient, not every month.

58. The Respondent relies on the 5th Schedule para 6 of the lease (set out above). It argues that the fact that some leases also include at para 7 "maintaining the grounds of the building, including…(ii) planting and tending the gardens" does not detract from an interpretation of para 6 that maintaining the grounds would cover the works done in this case. Mr Housden's opinion that 3 or 4 visits a year is enough is just that. He rents them his flats out, and is not in a true position to say what is necessary.

59. In the Tribunal's determination the cost was reasonably incurred. The requirement for a gardener is not challenged. There is no argument over quality of works. The amount does strike the Tribunal as high for the areas which are covered in the photographs we have seen, but the number of hours spent on each visit is not disclosed.

60. Doing the best it can, the Tribunal reduces the cost to £756, a reduction of 25%, to reflect the above. That works out as £9 per unit per month.

(3) Key cutting (£14.10)

(4) Night latch replacement (£90)

61. These costs were £14.10 and £90 respectively.

62. The Applicants simply submit that such costs are not covered by the express terms of the lease, plus there are no invoices.

63. The Respondent contends that paragraph 8 of Sch 3 applies:

"Providing within the building reasonable facilities and arrangements for (i) security…"

64. The Tribunal would tend to agree with the Respondent on the lease construction, but that, of itself, does not get the Respondent far. There is simply insufficient information about these costs: no evidence of how many keys, or why the key and latch replacements were necessary in the first place.

65. We therefore disallow both items. We are unable to find the costs were reasonably incurred, albeit the sums are small and do not seem unreasonable in amount for the type of works.

(5) Wall repair (£1300)

66. The Applicants complain there is no information about this item. They therefore dispute the cost was reasonably incurred and reasonable in amount.

67. The Respondent relies on the photos at [464], and the emails at [461] and [463].

68. The Tribunal does not allow this item. Whilst the email tends to evidence that as of 31 January 2017 the wall had a worryingly dangerous camber to it and appears to have an unstable wobble, there is no documentation confirming that the landlord did anything about it, or if so, what (such as a paid invoice).

69. We are not satisfied that the sum was incurred and is reasonable in amount.

(6) Pipework repair (£260).

70. The Applicants complain there is no information about this item. They therefore dispute the cost was reasonably incurred and reasonable in amount.

71. The Respondent contended the relevant invoice had been disclosed. We were not shown it.

72. The Tribunal disallows this item, for the reasons the Applicants contend. We are unable to find the costs were reasonably incurred, albeit the sums do not seem that unreasonable in amount.

(7) Re-carpeting (£792)

73. The Applicants contend this was an improvement, not a repair. The Applicants also complain there is no information about this item. They dispute the cost was reasonably incurred and reasonable in amount.

74. The Respondent was unable to assist the Tribunal on this item.

75. The Tribunal disallows this item on the basis the Applicants contend. We are unable to find the costs were reasonably incurred or reasonable in amount.

(8) Accountant (£510)

76. The Applicants contend there is no witness statement from any accountant, to say the work was executed. The Applicants contend the accountant is connected to the landlord, in that Martin Heller accountants have been the "Gurvits family" accountants since 1999, and share the same business address as both the Respondents and their agents.

77. The Respondent contends that it is reasonable to infer work was undertaken by the accountant; the alternative would mean the Respondents are being fraudulent.

78. We have already determined that we are prepared to accept Frank Martin FCA and Adrian Heller FCA hold the qualifications they profess and are "registered to carry out audit work in the UK by the institute of Chartered Accountants in England and Wales" as their letter professes [828].

79. The Tribunal does not consider the fact that Martin Heller are family accountants and share the same address as the Respondents and their agents, is enough to disallow the item.

80. The Tribunal determines the amount was reasonably incurred, and reasonable in amount, for carrying out the preparation of a service charge account after being satisfied it is sufficiently supported by accounts, receipts and other documents.

(9) Management fee (£2484)

81. The Applicants contend that the invoice [465] is not to be relied upon, because it is not marked as "paid", i.e. it is unstamped. The Respondent has disclosed other invoices which are stamped, and this one is not. The Applicants further contend that the agents Eagerstates Ltd are not independent of the freeholder. This is "common knowledge"; they share directors and address. The lessees were never informed of this fact. The fees should be lower because of their shared facilities. They complain that the managing agents have failed to properly apportion and calculate service charges/ insurance rent, failed to identify overcharging (see statement of Mr Clayton), failed to return overpayments, and failed to engage an independent auditor / accountant, and did not properly incur accountancy fees every year in so far they employed Martin Heller. There is evidence of embezzlement of leaseholder monies, they contend, in that the agent requested more than 100% of service charges but only accounted for 100%, seemingly pocketing the balance for itself. The agents failed to account for commission / discounts in relation to buildings insurance, and wrongly required leaseholders to pay for improvement works / unnecessary works. Finally they did not circulate service charge accounts that complied with TECH 03/11 from ICE, as the RICS Code contemplates. The insurance broker used was not arms-length. An average unit cost of £276 is therefore unreasonable.

82. The Respondents contend the Tribunal should apply *Skilleter v Charles* [1992] 24 HLR 421, in which it was held that, unless the agreement is a sham, a freeholder can set up and use a separate management company. Counsel contended that Eagerstates manage other legal person's properties, not just the Respondent's. Whilst there are shared directors, there is no evidence of a sham. The Respondent could not inform the Tribunal how the management fee was calculated, but an average cost of £276 per unit is not on its face unreasonable, it was contended. It was accepted that there is no management contract in the bundle. It was further accepted that overcharging would be evidence of poor management. It was denied that using the insurance broker it did was inappropriate.

83. The Tribunal determines as follows:

84. We have insufficient evidence of a sham relationship between the Respondent and Eagerstates Ltd. We are also unable to determine serious issues such as embezzlement, and for the reasons stated elsewhere in this judgment, the leaseholders must pay their proportion of charges/share expressed under their leases, and if that totals more than 100%, we cannot overturn the express terms of each lease on an application under s.27A of the 1985 Act. Any remedy the leaseholders may have in this regard lies elsewhere, whether for variation of the leases or for unjust enrichment.

85. However, in cases where the quality of the services delivered by the agents themselves or others and/or the condition of the development is below normal expectations, the Upper Tribunal has accepted this as being indicative of the management function not being executed to a reasonable standard. In *Kullar and Prior Place Residents Association v Kingsoak Homes Ltd* [2013] UKUT (LC) the management agent's fees were reduced by 10% on account of the many problems experienced in the block.

86. Whilst a unit cost of £276pcm for management fees is not itself outside the range of the experience of this Tribunal, we are not impressed by the agent's record-keeping, nor are we satisfied, from an overall impression stepping back in the round, that the quality of service was of the standard to be expected of a reasonably competent managing agent. There has been a lack of transparency in some case. We have not even been provided with the management agreement.

87. We conclude that a management fee was reasonably incurred; we are not satisfied it was reasonable in amount in all the circumstances. We therefore reduce the management fee by 20%. The relevant cost is reduced to £1987.20.

(10) Request for bank statements

(11) Administration charges (general)

88. The Applicants withdrew these challenges at the hearing.

2018

(1) Building Insurance (1609.15)

89. The Applicants raised the same arguments as under 2017. The Respondents responded in similar terms.

90. The Tribunal makes a similar determination as under 2017, for similar reasons. The increase over the previous year was marginal, and does not affect our decision.

91. We allow the sum in full.

(2) Gardening and cleaning (£1008)

92. The Applicants raised the same arguments as under 2017. The Respondents responded in similar terms.

93. The Tribunal makes the same determination as under 2017, for the same reasons.

94. The relevant cost is therefore reduced to £756.

(3) Fire Health & Safety Service (£583.26)

95. The Applicants contended that there was no documentation in relation to this item to evidence what the work was for, or to justify its amount.

96. The Respondent could not point to any document to support the relevant cost, nor inform the Tribunal orally what the cost related to.

97. We disallow the sum accordingly.

(4) Pest control (£80)

98. The Applicants contend there is no "paid" stamped invoice.

99. The Respondent could not point to any document to support the relevant cost, nor inform the Tribunal orally what the cost related to.

100. We disallow the sum accordingly.

(5) Key cutting (£13.40)

101. The parties deployed the same arguments as before.

102. We determine that there is simply insufficient information about the costs: no evidence of how many keys, or why they were needed.

103. We therefore disallow the item. We are unable to find the cost was reasonably incurred, albeit the sum is small and does not seem unreasonable in amount for the type of works.

(6) Fire Health & Safety FRA (£583.26)

104. The Applicants contended that no Fire Risk Assessment (FRA) report had been received by them, but would not go so far as to allege there had been no FRA at all.

105. The Respondent contended there was, in all likelihood, a Fire Risk Assessment in this year, since it is mentioned in the s.20 documents, and led to works being tendered [506-507], a statement of estimates [509-510], and a

demand [511]. There were no observations or objections to the works during the consultant process, it was contended.

106. We are prepared to allow a FRA cost, for this year. It is highly unlikely the Respondent proceeded to works without a FRA. This was the first FRA for the years under question, and the cost does not seem unreasonably high for such a report. We allow the sum in full.

(7) Accountant (£510)

107. The parties deployed the same arguments as under 2017.

108. The Tribunal allows the cost, for the same reasons as under 2017.

(8) Management Fee (£2508)

109. The Applicants made the same arguments as under 2017, and in addition pointed to the increase in fee to £2508.

110. The Respondent deployed the same arguments as in 2017, contending the increase was only small. It was argued that it is for the Tribunal to determine what was a reasonable fee, and then reduce it, according to any failings of service.

111. The Tribunal agrees the increase over 2017 was minimal. However, we reduce the cost for the same reasons as under 2017, and by the same percentage. The amount payable shall be £2006.40.

(9) Request for bank statements

(10) Administration charges (general)

112. The Applicants withdrew these challenges at the hearing.

2019

(1) Buildings Insurance (£3046.37)

113. The parties made the same arguments as under 2017. Ms Tuplin added that the reduction for this year should be in the region of 55%. Mr Skeate for the Respondent argued that insurance costs for buildings had increased considerably since 2017.

114. In this case, it is clear the sum insured has risen dramatically (doubled). The certificate of insurance refers [541].

115. We have insufficient evidence to justify the near doubling of the premium; we can see the insured sum has increased, but have no explanation whatsoever for the increase in sum insured.

116. It is not in dispute insurance was reasonably placed and a cost should have been incurred. We consider that cost to be the 2018 figure with a reasonable uplift, to reflect the Tribunal's experience of rising costs in this market. We determine a reasonable amount to be £2000.

(2) Gardening and cleaning (£1188)

117. The Applicants raised the same arguments as under 2017. The Respondents responded in similar terms to previously, but emphasised that the Property grounds included the front and the rear. Mr Skeate also said that the leaseholders agree that work was in fact done.

118. The Tribunal makes the same determination as under 2017, for the same reasons. The increase on the previous year is in the region of 10%, and is not excessive, in our view.

119. The relevant cost is therefore reduced to £891.

(3) Fire Health & Safety (£410)

120. The Applicant's made the same arguments as under 2017/2018. The Respondent did likewise, but contended that even if this was a FRA, it would be reasonable to undertake one every year.

121. The Tribunal disagrees. Assuming this was a FRA (and there is no documentation to support either the service or cost), unless the previous FRA recommended a survey 12 months later, another one in 2019 could not be justified. Moreover, the previous year's FRA was not directly in evidence.

122. We disallow the sum.

(4) Drain cleaning (£306)

123. The Applicants contended that there was no documentation in relation to this item to evidence what the work was for, or to justify its amount.

124. Mr Skeate could not assist the Tribunal by pointing to any document.

125. We disallow this item, for reasons of lack of evidence.

(5) JMC Surveyor for insurance reinstatement (£900)

126. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

127. Mr Skeate could not assist the Tribunal by pointing to any document.

128. We disallow this item, for reasons of lack of evidence.

(6) FCU Switch replaced (£150)

129. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

130. Mr Skeate could not assist the Tribunal by pointing to any document.

131. We disallow this item, for reasons of lack of evidence.

(7) Additional insurance premium due to SI increase (£675.63)

132. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

133. Mr Skeate could not assist the Tribunal by pointing to any document.

134. We disallow this item, for reasons of lack of evidence.

(8) JMC Survey to ascertain extent and nature of structural defects (£1296)

135. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

136. Mr Skeate pointed to the JMC survey at [491-501] which makes it clear it is not a structural survey or valuation survey for insurance purposes, but a condition survey. He contended that the description was semantic. If there is a liability to pay for the survey, that is enough.

137. We agree that the item heading is not determinative. A cost was reasonably incurred. The report makes clear it was commissioned to inspect movement and cracking in the Property [492]. We consider that exercise was a rational decision, before going to the expense of instructing a structural engineer. Indeed, Mr Moscovitz MRICS found that the structure generally appears to be in a reasonable and stable condition [499].

138. We note the invoice in the CMC bundle {297} which shows 9 hours at £120 p/h, which rate is acceptable. It is unclear, however, why the Respondent had to employ a Manchester surveyor rather than a local one. The report is detailed, but the experience of the Tribunal is that its cost exceeds what we would expect, notably in number of hours.

139. We determine a sum of £1000 to be reasonable.

(9) Pest control (£70)

140. The Applicants contend there is no “paid” stamped invoice.

141. The Respondent could not point to any document to support the relevant cost, nor inform the Tribunal orally what the cost related to.

142. We disallow the cost for reasons of lack of evidence.

(10) Roof and chimney repair (£2000)

143. The Applicants contended that there was no documentation in relation to this item to evidence what the work was for, or to justify its amount. Moreover, the JMC report refers only to some tiles dislodged, which would not cost this amount.

144. The Respondent contended that the Applicant accepted there was an issue with the roof; something had to be done, therefore.

145. Mr Skeate could not assist the Tribunal further.

146. We disallow this cost for lack of supporting evidence.

(11) Fire H&S works per s.20 Notices (£4934.76)

147. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

148. Ms Tuplin was asked by the Tribunal whether her clients were saying the work had not been done. Her response was that they cannot remember.

149. The Respondent relies on the s.20 documentation [509-510]. We also note the invoice in the CMC bundle {298} dated 9 April 2019, albeit it contains only a basic description and is not marked “paid”.

150. The Tribunal considers it unlikely that the Respondent would have gone to the trouble of s.20 consultation and then getting tenders, only to abandon the works. The works are said to result from the previous FRA. We are concerned that none of the Applicants could even assist the Tribunal as to whether an external handrail to the rear steps had been fitted.

151. The sum in the service charge statement matches the s.20 cost including management fee of 15% [508]. Given that we do not have the management agreement, we cannot be satisfied that the 15% was justifiable or recoverable.

152. We therefore allow the base cost of £4182 only, on the ground that it was a cost reasonably incurred and reasonable in amount, at least for the work shown on the s.20 notice [506] and the invoice.

(12) Emergency lighting repair works (£594)

153. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

154. The Respondent could not point to any document to support the relevant cost, nor inform the Tribunal orally what the cost related to.

155. We disallow this cost for lack of supporting evidence.

(13) Water leak tracing, repair and redecorating (£795)

156. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

157. The Respondent could not point to any document to support the relevant cost, nor inform the Tribunal orally what the cost related to.

158. We disallow this cost for lack of supporting evidence.

(14) Fire H&S Risk Assessment (£408)

159. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

160. The Respondent could not point to any document to support the relevant cost.

161. Given that there had been fire safety works in the previous year, and given the lack of evidence from the Respondent, we disallow this item.

(15) Drains descaling & CCTV (£1320)

162. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

163. The Respondent points to the JMC survey as to the need for the works; the Applicants saying they do not think the work was done is simply not enough.

164. We prefer the Respondent's arguments. The amount is a sum reasonably to be expected, in the Tribunal's experience. We allow the full amount.

(16) Additional works required for FHS (£540)

165. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

166. Mr Skeate could not assist the Tribunal as to this item.

167. We disallow this item for lack of supporting evidence.

(17) Accountant (£540)

168. The parties repeated their arguments for 2017.

169. The Tribunal makes the same decision for the same reasons as for 2017, allowing a modest sum for an annual increase.

(18) Management Fee (£2868)

170. The Applicants made the same arguments as under previous years, and in addition pointed to the increase in fee to £2868.

171. The Respondent deployed the same arguments as before, contending the increase was only small.

172. The Tribunal agrees the increase to be minimal. However, we reduce the cost for the same reasons as under 2017 and by the same percentage. The amount payable shall be £2294.40.

(19) Request for bank statements
(20) Admin charges (general)

173. These items were not pursued.

2020

(1) Buildings Insurance (£2975.30)

174. The parties made the same arguments as under 2017.

175. The sum insured cost itself has reduced to £1.36M. The certificate of insurance refers [584].

176. It is not in dispute insurance was reasonably placed and a cost should have been incurred. We consider that cost to be the figure allowed for 2019 figure with a reasonable uplift to reflect the Tribunal's experience of rising costs in this market. We determine a reasonable amount to be £2200.

(2) Gardening and cleaning (£1008)

177. The Applicants raised the same arguments as under 2017. The Respondents responded in similar terms.

178. The Tribunal makes the same determination as under 2017, for the same reasons.

179. The relevant cost is therefore reduced to £756.

(3) Window cleaning (£192)

180. The Applicants argued that the lease terms did not cover expenditure on window cleaning, and windows are blocked up in the common parts. However, Mr Clayton gave evidence there was 1 window on the landing in Building 5, and a single window on the first floor. He did not know about Building 6.

181. The Respondents could not point to any invoices.

182. In the Tribunal's determination a cost should be allowed. The 5th Schedule, para 5 is sufficient to cover this cost. However, given the number of windows disclosed in oral evidence, the cost should be reduced to £50.

(4) Damp works per s.20 Notice (£2813.59)

183. The Applicants acknowledged the letter in the bundle [586] but observed it was in a different sum (£586). However, they had to accept the signed contract is in the sum claimed [587-588].

184. Unusually, Ms Tuplin for the Applicants contended it was the interior of a flat which had been repaired, so that 1 flat owner only should be liable (5B). She relied on Mr Griggs' evidence that he had not seen any sign of the works having been executed. He also contended that, as a quantity surveyor, listed building consent was required but not obtained; and further that many damp problems are caused by poorly maintained gutters and rainwater goods, a recurring problem with these buildings.

185. Mr Clayton gave evidence there was a passageway between numbers 5 and 6, and that this chimney breast internally was on the other side of the passageway.

186. The Respondents contended that this cost fell within paragraph 1 of the 5th Schedule to the lease, being a repair to the main structure. The DPC affected the chimney of flat 5B, and this work was aimed to stop dampness vertically, rather than horizontally.

187. Looking at the works detailed on the relevant page [590], the Tribunal is satisfied that these works were to the main structure, and fell within the lease: either paragraph 1 or 2 of the 5th Schedule or both. This was a repair to the main structure (the dividing the flat from the exterior) and the damp-proofing benefited all occupiers by preventing more widespread dampness to the building. We cannot be satisfied the works resulted from a failure in the months preceding the repair /to keep the rainwater goods clear of debris. The fact that listed consent was not obtained does not affect the cost (indeed it might well have been greater if it had been).

188. We conclude that this a cost reasonably incurred and reasonable in amount, and allow the sum of £2813.59.

(5) 6 monthly Fire H&S service (410.52)

189. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

190. The Respondent's counsel could not assist on this item.

191. We disallow this item for lack of supporting evidence.

(6) Drain service (£153)

192. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

193. The Respondent's counsel could not assist on this item.

194. We disallow this item for lack of supporting evidence.

(7) Repairs to manhole (£461.78)

195. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

196. The Respondent's counsel could not assist on this item.

197. We disallow this item for lack of supporting evidence.

(8) Emergency lighting remedial works (£665.71)

198. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

199. The Respondent's counsel could not assist on this item.

200. We disallow this item for lack of supporting evidence.

(9) EICR report for Building 5 (£668.30)

201. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

202. The Respondent's counsel could not assist on this item.

203. We disallow this item for lack of supporting evidence.

(10) EICR report for Building 6 (£168)

204. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

205. The Respondent's counsel could not assist on this item.

206. We disallow this item for lack of supporting evidence.

(11) Installation of rat flap (£204)

207. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

208. The Respondent's counsel could not assist on this item.

209. We disallow this item for lack of supporting evidence.

(12) Replacement of faulty light (£208)

210. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

211. The Respondent's counsel could not assist on this item.

212. We disallow this item for lack of supporting evidence.

(13) Accountant (£570)

213. The parties raised the same arguments as under 2017.

214. The Tribunal determines the sum was reasonably incurred and reasonable in amount, for the same reasons as previous years, allowing a reasonable increase for rising costs.

(14) Management Fee (£2559.60)

215. The Applicants made the same arguments as under previous years.

216. The Respondent deployed the same arguments as before.

217. The Tribunal notes the decrease in the figure. However, we still reduce the cost for the same reasons as under 2017 and by the same percentage. The amount payable shall be £2047.68.

(15) Admin charges (general)

218. The Applicants did not pursue these charges.

2021

(1) Buildings Insurance (£3143.34)

219. The parties made the same arguments as under 2017. The Applicants pointed to the specific documents for this year in relation to payments to the underwriter and broker. Mr Skeate contended it was not the Respondent paying a commission or receiving a commission; there was no evidence of "kickback".

220. The 'sum insured' cost itself has risen to £1.44M, the certificate of insurance reveals [620].

221. It is not in dispute insurance was reasonably placed and a cost should have been incurred. We consider a reasonable cost to be the figure allowed for 2020 figure, with a reasonable uplift to reflect the Tribunal's experience of rising costs in this market. We determine a reasonable amount to be £2400.

222. We are not satisfied the sums payable to insurer and underwriter were improper.

(2) Gardening and cleaning (£924)

223. The Applicants raised the same arguments as under 2017.

224. The Respondents responded in similar terms to previous years.

225. The Tribunal notes the reduction in cost. However, we still make the same determination as under 2017, for the same reasons.

226. The relevant cost is therefore reduced to £693.

(3) Fire, H&S testing and services (£651.48)

227. The parties repeated their previous submissions.

228. The Tribunal disallows the amount charged for the same reason as before.

(4) Bin cleaning (£144)

229. The Applicants contended that such cleaning did not fall within the terms of the leases, and complained the relevant invoices did not bear the name of the Respondents or their agents. They informed us that there are 3 Biffa type bins.

230. Mr Griggs was convinced they were not cleaned. However, paragraph 16 of his statement concerns the year 2022, not 2021 [329].

231. Respondent's counsel pointed to para 7 of the 3rd Schedule of the lease [1096]: "providing within the building reasonable facilities and arrangements

for…(iii) rubbish disposal". Bin cleaning falls within the term "rubbish disposal", he contended.

232. Mr Skeate also contended that it mattered not whether subcontractors, such as those named on the invoices, were employed. It was a cost reasonably incurred and reasonable in amount. The service was twice a year @ £72. The Applicants had no alternative quotations to show the sum charged was excessive.

233. We prefer the Respondent's representations, and allow the sum in full.

(5) Repair of front door (£245)

234. The Applicants contended that such cleaning did not fall within the terms of the leases, and complained the relevant invoices were absent.

235. The Respondent contended that the front door is part of the "main structure" and is also providing facilities for security: see para 1 and 7(i), 3rd Schedule.

236. We agree. However, we must disallow the item for lack of any supporting documentation.

(6) Fire H&S assessment (£153)

237. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

238. The Respondent's counsel could not assist on this item.

239. We disallow this item for lack of supporting evidence.

(7) Repair after damage to wall (£260)

240. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount. The only document was a claims summary, showing there was impact to a wall at 5 North End on 28 December 2020, for which an insurance claim of £4907.60 was made [386].

241. Respondent's counsel could not assist on this item.

242. We did consider at one point that this might be an insurance excess. However, we would be wrong to speculate. We disallow this item for lack of supporting evidence.

(8) Removal of shrub and moss and replacement of downpipe (£108.38)

243. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

244. The Respondent's counsel could not assist on this item.

245. We disallow this item for lack of supporting evidence.

(9) Fire door inspection (£668)

246. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount. The only document was a report from Fire Door Surveying Ltd dated 2 July 2021 [625].

247. The Respondent contended sufficient detail had been given.

248. We agree with the Respondent. The report is detailed and followed an inspection. It is likely to have been required by the new Fire Safety Act 2021. The sum charged does not seem excessive to us.

249. We allow the sum in full.

(10) Accountant (£600)

250. The parties raised the same arguments as under 2017.

251. We determine that the sum was reasonably incurred and reasonable in amount, for the same reasons as previous years, again allowing a modest increase.

(16) Management Fee (£2581.20)

252. The Applicants made the same arguments as under previous years.

253. The Respondent deployed the same arguments as before.

254. The Tribunal notes a marginal increase in the figure. However, we still reduce the cost for the same reasons as under 2017. The amount payable shall be £2064.96.

(17) Admin charges (general)

255. These were not pursued by the Applicants.

2022

(1) Buildings Insurance (£3941.95)

256. The parties made the same arguments as under 2017. The Applicants pointed to the specific documents for this year. The sum insured cost itself has risen to £1.687M. The certificate of insurance refers [691]. The Applicants seek a reduction of 40%.

257. It is not in dispute insurance was reasonably placed and a cost should have been incurred. We consider that cost to be the figure allowed for 2021 figure with a reasonable uplift to reflect the Tribunal's experience of rising costs in this market. We determine a reasonable amount to be £2600.

(2) Additional Insurance (£61.51)

258. The Applicants contended that there was no documentation in relation to this item to evidence either what the sum was for, or to justify its amount.

259. The Respondent was unable to assist.

260. We disallow this item for lack of supporting documentation.

(3) Grounds maintenance for front and rear gardens (£1260)

261. The Applicants raised the same arguments as under 2017. However, they accepted there were monthly invoices at £84 minimum (x 12 = £1260).

262. The Respondents had nothing to add.

263. The Tribunal notes the invoices. However, we make the same determination as under 2017, for the same reasons.

264. The increase from the previous year is not excessive. The cost is therefore reduced by 20% to £1008.

(4) Fire H&S testing services and repairs (£2478.12)

265. The Applicants complain of lack of documents in their Scott Schedule, but Ms Tuplin took us to certain pages [712-751].

266. We consider, looking at the description on these documents, many of which concern emergency lighting, that the costs were reasonably incurred

267. We have totalled the sums for the invoices which we have, and allow the sum of £2347.32.

(5) Bin cleaning (£345.60)

268. The parties repeated their previous contentions.

269. Also, Mr Griggs gave evidence as to the state of the bins in what he said was March/April time. The first invoice in the bundle is dated January 2022

[815]. The second and third ones are April and July [816-817]. The bins were broken and dirty and generally in a dilapidated state, he testified.

270. The Respondent contended that, if it is said that the bins were insanitary, this justifies having them jet washed. The photographs of the bins in the bundle are not dated, and the Applicants can say whether or not the photographs were after or before the bin cleaning.

271. We prefer the Respondent's arguments. For the same reasons as under previous years, we consider this to have been a cost reasonably incurred and reasonable in amount, bearing in mind it was for 3 separate visits.

(6) Fire door inspection (£668)

272. The Applicants repeated their arguments for 2021.

273. The Respondent emphasised the Eagerstates evidence at (b)(iii) [211] to the effect there were no contracts in place for the year.

274. Unlike 2021, there was no document Mr Skeate could point us to, in order to justify the works and the cost. It is entirely unclear which doors were inspected and why. However, we note the invoices in the CMC bundle dated 24 November 2021 and 9 December 2021 from Security Masters Ltd in the sum of £664.40 {312, 314}. These give sufficient details of the visits and are marked "paid".

275. We allow the cost as being reasonably incurred and reasonable in amount.

(7) Surveyor to prepare a PPM Schedule (£1170)

276. This is said to be a report by JMC on the roof, but neither party referred us to any report.

277. In the CMC bundle is an invoice {313} for an inspection and preparation of a PPM schedule. It is also marked "paid". In the bundle of documents accompanying Mr Gurvits' statement is a JMC report dated December 2021, and a PPM document dated August 2021. In our determination there is sufficient information for the Tribunal to find the cost to have been reasonably incurred and reasonable in amount.

(8) Surveyor's reinstatement cost assessment for insurance (£300)

278. The Applicants complained there were no supporting documents bar [773], a JMC reinstatement cost assessment dating from December 2021. The Applicants pointed to the author's lack of qualifications, as they saw it. However we note the report was checked by a MRICS, Mr Cope [779]. The Applicants also contended this report could have been obtained for free, and further, it did not refer to the building's listed status.

279. The Respondent contended that on the face of the document the cost was reasonably incurred and reasonable in amount. Mr Skeate said he was not aware that any report could be obtained for free.

280. We note the invoice in the CMC bundle {322} which supports this assessment, and it is marked "paid". Whilst there is some legitimate criticism to be made of the valuation for not referring to listed status, we consider the 5 page report (excluding frontispiece and signature page) to have been value for money; as such, a cost which was reasonably incurred and reasonable in amount. We allow the sum in full.

(9) Replacement of Hi spec with microwave sensor (£276)

281. The Applicants explained this appeared to be a movement detector bulb, from Google research.

282. Mr Skeate explained this was not just a bulb, but a security sensor as well. He referred to the description [763].

283. We accept the Respondent's s explanation. In the circumstances, the cost was one which was reasonably incurred. As to amount, the figure does not seem high, in the Tribunal's experience, for such materials and labour.

284. We allow this item in full.

(10) FHS remedial works (£2286)

285. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

286. Mr Skeate could not assist, and queried if it was a duplication (given item (11) below).

287. We disallow the item for lack of supporting documentation and explanation.

(11) Fireboarding etc (£2286)

288. Neither party directed us to [764], but that seems to be the relevant invoice. This invoice details the following works: install 60 minute fire board to the inside of the cupboard and seal all remaining gaps and breaches with fire sealant; replace 3 non-fire rated hinges with three grade 13 hinges, and rehang the door with minimum requirement gaps.

289. It is unclear how long this work took, or what the cost of materials was. The overall cost at first blush seems high, but bearing in mind the Applicant's lack of alternative quotation, we cannot determine it is outside a reasonable range, bearing in mind that it concerns important fire safety works.

290. We allow the sum in full.

(12) New door fitted with hardware (£1500)

291. The Applicants pointed us to the invoice and photos at [761] and [762], being in the sum of £1500. The Applicants suggested this work should have cost no more than £650 plus vat.

292. Mr Skeate could not assist as to why the cost was so high for just some hardware.

293. We agree with the Applicants, and allow £780.

(13) Temporary roof repairs (£1062)

294. The Applicants pointed us to an invoice and photos [818-819]. They complained the matter should have been the subject of a buildings insurance claim that was made on 4 March 2022 [386]. They relied on Mr Clayton's evidence at para. 18 [282]. He complains of a water leak into his kitchen and lounge in February, and that the operatives in March 2022 went up with 4 battens and plastic sheeting, hammered for around 15 to 20 minutes and then left. Moreover, the temporary repair only lasted three months. By May 2022 there was water pouring again into his bedroom.

295. The Respondent emphasised this was temporary work only, and relies on the description on the invoice:

> "Roofing operatives attended and found various issues and required materials to install any kind of temporary repairs. Operative reattended in the morning and installed temporary repairs as well as surveyed the roof and provided a quote for the necessary replacement. These works were carried out during the storms and classed as an emergency. We are happy to write to insurers if necessary."

296. Mr Skeate said that it was speculation to assert the work should have been covered by insurance, which may have resulted in a loss of no claims bonus and an excess in any event, had a claim been made on it.

297. In our determination, the works was reasonably incurred and reasonable in cost, given it was an emergency, during a storm. There was also a quotation for works on the next day. The temporary work did last at least 3 months. We do not consider it was necessary for a surveyor to do the quotation, as opposed to a roofer. We prefer the Respondent's arguments, and allow the sum in full.

(14) Rodent proofing (£168)

298. The parties repeated their arguments under previous years.

299. The Respondents allege this was required "as per the FHS survey", to which we were not taken.

300. The Tribunal however notes the invoice and photos in the CMC bundle {423-425} which indicates this was for external and internal rodent proofing, which is shown in the photos. Accordingly, we find the sum to have been reasonably incurred and reasonable in amount.

(15) Standard Electrical Audit Report (£2232)

301. The invoices and supporting documents appear at [794-806]. The Applicants are unsure why work this was necessary. There is no common parts electricity supply, they say. We note that the 2 invoices are in identical terms except they relate to building 5 and building 6 separately. [794-795].

302. The Respondent contends the Applicants have no alternative quotes, and have no way of challenging the item.

303. There is an electrical board on the photographs we have [796]. We consider an audit of landlord's supply with thermal imaging was a cost which was reasonably incurred, and the Applicants have no alternative costing. We therefore allow the full amount.

(16) Securing of cables with metallic fixing (£784.08)

304. The documents at [792-793] refer, including photos. The Applicants contended that photographs were not evidence the works were reasonably required.

305. The Respondent disagreed; one cannot have loose cables in a building. The wording on the invoice includes this: "Currently, subject to premature collapse in the event of fire".

306. We agree with the Respondent, and allow the item in full, being a sum reasonably incurred and reasonable in amount.

(17) Generation of electrical specification (£432)

307. The Applicants pointed at [807], being the relevant invoice. This reads "generation of electrical specification and scope of works for the above property. Discount as per management of 78%."

308. The Respondent was unable to make any submissions.

309. We disallow the item for lack of supporting explanation and evidence (i.e. the scope of works).

(18) Gutter and downpipes inspection and cleaning (£1194)

310. The invoice [810] and photos refer [811].

311. The Applicants contend there is no report, and the description on the invoice is vague ("to carry out inspection and cleaning all gutters and down pipes on the property"). They rely on Mr Griggs' evidence that in October 2022 he attempted to get a quote, but the cleaners refused on the grounds the gutters were broken in several places. This was not work reasonably incurred or reasonable in amount in May/June 2022, they said.

312. In our determination the description is sufficient, and the cost was reasonably incurred. Guttering blockage has been an historical issue, and periodic cleaning is therefore necessary. The Applicants have remedies in other forums for disrepair. However, the cost appears, in our experience, to be excessive for buildings of this size. We allow just £500 (see invoice at [812] for a similar cost for similar works later in the year).

(19) Surveyor to report and prepare a SOW (£1100)

313. The Applicants contended that there was no documentation in relation to this item to evidence either what the work was for, or to justify its amount.

314. Mr Skeate made no submissions.

315. We disallow this item for lack of supporting documentation/ explanation.

(20) Fire H&S risk assessment (£432)

316. The parties repeated their arguments under previous years, although there is an invoice [760].

317. We disallow this item for lack of supporting evidence (report)/ explanation as to why a FRA was a cost reasonably incurred. For example, no previous report has been disclosed to say a re-inspection after *x* years is advisable.

(21) RWG cleaned of vegetation and local repairs (£498)

318. The Applicants argue that it is a duplication of (18) above.

319. We disagree. 6 months later one might reasonably expect the gutters to be checked an cleared and repaired again, as necessary. This was routine, sensible maintenance. We also note the invoice in the CMC bundle {403} from Superior Facilities Maintenance Ltd, which supports this item and its cost.

320. We consider this was a cost reasonably incurred and reasonable in amount.

(22) Pathway works (£1200)

321. An invoice and photographs refer [706-708]. The invoice contains a full description. (Removal of moss and vegetation from paths by pressure wash, all waste and debris, inspect paths, allow for localised repairs and undertake any remedial repairs to degraded paving joints, add chippings).

322. The Applicant's contended this work should have been covered by the grounds maintenance charged. They also contended there was a link between Superiod Facilities Maintenance Ltd and Eagerstates.

323. The Respondent contended that simple weeding would be grounds maintenance; pathway cleaning and repair, as here, would not be. The invoice description should be taken at face value.

324. The Tribunal accepts that this was work reasonably incurred. However, looking at the photographs, and bearing in mind the extent of the area to be undertaken, we cannot see this work would have taken more than 1 person 1 day, even in November daylight, and without using special materials. We note that much of the work on the invoice is "allowances".

325. We consider a reasonable amount to be £600.

(23) Deposit for Roof Works as per s.20 Notices (£12,000)

326. This item was withdrawn, in that the sum is a credit, not a debit.

(24) Deposit for major electrical works (£4076.05)

327. The Applicants contend this was unnecessary work - changing the landlord's supply to the building. The previous installations worked well. The Applicants had made email representations in 2023 to this effect [292]. The response given did not explain the rationale for the works [293].

328. Mr Skeate could not assist on this item. We note there is an invoice {410}, but it bears insufficient detail of the works.

329. We cannot be satisfied this work was reasonably incurred. We disallow this item.

(25) Accountant (£630)

330. The Applicants and the Respondent repeated their previous submissions.

331. The Tribunal decides this item is recoverable, for the same reasons as before.

(26) Management Fee (£2602.80)

332. The Applicants and the Respondent repeated their previous submissions.

333. The Tribunal reduces this amount by 20%, for the same reasons as before. £2082.24 is allowed.

(27) Administration charges

334. The Applicants did not pursue this general item. The specific position of Mr and Mrs Hudson has been considered earlier in this decision.

2023

(1) Buildings Insurance (£4502.68)

335. The Applicants relied on an alternative quotation, exhibited by Mr Housden [387ff].

336. The Respondent contended the quotation was not like for like, when compared with the landlord's certificate from Mi Specialty [832-833].

337. We agree.

338. It is not in dispute insurance was reasonably placed and a cost should have been incurred. We consider that cost to be the figure allowed for 2022 figure with a reasonable uplift to reflect the Tribunal's experience of rising costs in this market. We determine a reasonable amount to be £3000.

(2) Grounds maintenance for front and rear gardens (£1188)

339. The parties made the same arguments in their Scott Schedules. The Tribunal notes there are some invoices in the CMC bundle {430-438}.

340. The cost is therefore reduced by 20% to £950.40 for the same reasons as before.

(3) Fire H&S testing services and repairs (£1944)

341. The Applicants complain of lack of documents, in their Scott Schedule entry.

342. The Respondents did not point us to any documents, nor could we find invoices easily evidencing these works. We found JHB Fire invoices in the sums of £288 (x2), £600, and £96 {440-442}. There is also a Superior Maintenance invoice in the CMC bundle for £1206. However, we cannot

determine which, if any of these actually relate to the sum claimed. For those reasons, we disallow this cost.

(4) Brickwork cleaning (£1800)

343. The parties relied on their Scott Scheule representations.

344. We note the detailed invoice and photos in the CMC bundle {412-414}. We consider there is sufficient detail in those documents to find the cost reasonably incurred, and the sum is not excessive, in our view, given the extent of the works. We allow this item.

(5) Pilasters moulding, painting, stonework etc (£1800)

345. The parties relied on their Scott Schedule representations.

346. We cannot find supporting invoices, explaining the rationale for these costs and the sum claimed. We disallow this item.

(6) UKPN works (£4834.84)

347. The documents at [809] and [890] reveal that invoices were raised in relation to various works in 2 quotations (to which we were not referred) and an annual electrical inspection, plus some minor works [879].

348. We are unable to determine this was a cost reasonably incurred and reasonable in amount, without the supporting quotations.

(7) FRA assessment (£816)

349. The parties arguments were as for previous years.

350. We note the single invoice in the CMC bundle {439}. There is no detailed description on it, but we do have the LFP report to go on, which is to be found within the exhibits to Mr Gurvits' statement. It is dated 25 January 2023. It runs to 32 pages. We therefore allow this item as reasonably incurred and reasonable in amount.

(8) Banister repair and mould works (£1206)

351. The invoice carries a detailed description [890] including fire compartmentation /stopping works relating to a hole in the wall, treatment of mould, and plaster repairs. Photographs refer [891]. The Applicants contended there is no evidence before the Tribunal that the work was ever carried out. This is not a contention made in the Scott Schedule.

352. We are prepared to accept from the invoice being stamped "paid" that the contractor was paid for works which had been done. There has been no

previous averment the work was not executed, to which the Respondent could have adduced evidence in response.

353. We consider this was reasonably incurred and reasonable in amount, and allow the sum in full.

(9) BNO annual inspection (£1062)

354. The parties rely on their Scott Schedule representations.

355. We note the invoices in the CMC bundle in respect of both buildings {447, 462}. There are also photos {448-450}. This was an annual electrical survey. We therefore consider the cost reasonably incurred and reasonable in amount, noting there are 2 buildings.

(10) Electrical works (£1705.20)

356. The parties rely on their Scott Schedule representations.

357. We note the detailed invoices in the CMC bundle {459, 464-465}. There are also photographs {460}. We therefore consider the cost reasonably incurred and reasonable in amount.

(11) Signs for H&S (£144)

358. The parties rely on their Scott Schedule representations. We note the invoice supporting this sum in the documents which accompanied Mr Gurvits' statement. This confirms the work was to design, print and hang up the signs. We consider the cost reasonably incurred and reasonable in amount.

(12) Rebel Energy meter installation (£240)

359. The parties rely on their Scott Schedule representations.

360. We note the invoice in the CMC bundle {452}. This was a callout to meet "Rebel Energy" and supervise a meter installation.

361. We consider the cost reasonably incurred and reasonable in amount for that supervision.

(13) Electrician to liaise with UKPN (£153)

362. The Applicants complain of lack of documentation; the Respondents contend sufficient has been disclosed.

363. We note the invoice in the CMC bundle {453}. This was liaison with the energy provider to install the landlord supply (1.5 hours at £85 p/h).

364. We consider the cost reasonably incurred and reasonable in amount for that assistance.

365. Gutter and downpipes inspection and cleaning

366. The Applicants complain of lack of documentation, the Respondents contend that sufficient information has been disclosed.

367. We are unable to determine this was a cost reasonably incurred and reasonable in amount, without some supporting documents.

(14) Accountant (£660)

368. The parties rely on their previous representations. We note the invoice in the CMC bundle {411}.

369. We determine this item as allowable, for the same reasons as under previous years.

(15) Management Fee (2624.40)

370. The parties repeat their submissions. The increase over the previous year is noted to be minimal.

371. The Tribunal reduces this amount by 20%, for the same reasons as before. £2099.52 is allowed.

(16) Administration charges

372. The Applicants did not pursue this general item. The specific position of Mr and Mrs Hudson has been considered earlier in this decision.

Section 20/para 5A of CLARA

373. On day 3 of the hearing Mr Skeate conceded that the Respondent is unable to, nor will seek to, recover any of the costs of these proceedings through the service charges, or as administration charges.

374. We need not make an order, given the above concession.

Judge:

S J Evans

Date:

23/9/24

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The Application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the Application.
3. If the Application is not made within the 28-day time limit, such Application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the Application for permission to appeal to proceed despite not being within the time limit.
4. The Application for permission to appeal must identify the decision of the Tribunal to which it relates (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.