



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

Case reference : **LON/00AR/LSC/2024/0002**

Property : **1-6 Steelway Apartments, 61A South Street, Romford RM1 1NL**

Applicant : **Quang Trung Pham (Flat 1)
Nicola Hawkins (Flat 2)
Bo Kay Helen Joanne Benita Chung (3)
Andrew Fitch (Flat 4)
Urish Patel & Monika Madan (Flat 5)
Kai Lok Oscar Shum (Flat 6)**

Representative : **Nicola Hawkins**

Respondent : **Assethold Ltd**

Representative : **Joshua Cullen (Counsel) – 23 & 24 July;
Sam White (Counsel) – 13 September;
both instructed by Scott Cohen**

Type of application : **Service Charges (section 27A Landlord and Tenant Act 1985)**

Tribunal members : **Judge Robert Latham
Andrew Lewicki FRICS
Owen Miller**

Date and Venue of Hearing : **23 and 24 July, 13 September and 3 October 2024 at 10 Alfred Place, London WC1E 7LR**

Date of decision : **14 October 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal disallows the sums demanded for service charges for 2022/23 which are summarised in the Appendix.
- (2) The Tribunal reduces the sum included for insurance in the budget for 2023/24 from £6,123.05 to £3,860.
- (3) The Tribunal makes no further adjustments to the 2023/24 budget on the ground that any challenge should relate to the actual expenditure when the service charge accounts for the year have been prepared.
- (4) The Tribunal makes 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 tenants through any service charge.
- (5) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(The Applicants have provided a Bundle of Documents of 1,139 pages to which references are prefixed by "p.___". On 14 August 2024, they provided a supplementary bundle of 112 pages to which references will be prefixed by "SB.___").

Introduction

1. This application is brought by the six tenants who hold leases at Steelway Apartments, 61A South Street, Romford RM1 1NL ("the Building"). Two of the tenants occupy their flats; four are buy-to-let landlords. They all find themselves in an invidious position. They did not obtain a building survey prior to purchasing their flats, rather relying on the valuations by their mortgagees. In 2018, the Building was converted to create six flats by South Street Properties Limited ("the Developer"). A three-storey rear addition was added with a flat roof. There is a shop on the ground floor. The conversion was carried out to a low standard. There have been extensive problems of water penetration and with their drainage.
2. On 10 September 2019, the Respondent acquired the freehold. The Developer had offered the tenants the right of first refusal. However, they were unable to afford the premium. The Property has been managed by Eagerstates Ltd ("Eagerstates"), a company closely related to the Respondent landlord. The Respondent has failed to put the property into a proper state of repair. Whilst the service charges have been high, the quality of the services has been poor. The tenants complain of a lack of transparency in the manner in which the Respondent has operated the service charge account. Ms Chung, a solicitor, explained that the tenants

are now reluctant to complain about the ongoing disrepair, because this merely results in botched works and higher service charges.

3. On 27 July 2023, a Tribunal (Judge Andrew Dutton and John Naylor MRICS) (“the FTT”) in LON/00AR/LSC/2023/007 determined an application brought by five of the six tenants for the service charges payable for 2021/2 and the interim service charges payable for 2022/3. The Respondent failed to engage with the proceedings. At the hearing, Counsel appeared for the Respondent and the only document that set out the basis of the Respondent’s case was her Outline Submissions. She was not accompanied by any representative of the Respondent. The Tribunal made reductions totalling between £505.25 and £673.66 per tenant. The most significant reduction was made to the insurance. There is no evidence that the Respondent has credited the reductions made to their service charge accounts and the Applicants have had to take enforcement proceedings in the County Court. When tenants have withheld service charges because of their concerns about the quality of the services, the Respondent has failed to engage with them, but has rather threatened forfeiture proceedings.
4. In 2021/22, the service charge expenditure was £11,967.10 for the Building (for which the six tenants are liable for 50%) and £4,015.33 for the common parts (for which the tenants are liable for 100%). In 2022/3, the budget was £27,088.48 for the Building and £5,400 for the common parts. In the event, the actual expenditure was £42,802.56 for the Building and £9,153.18 for the common parts (an increase of 60%).
5. On 20 December 2023, the Applicants issued this application in respect of the service charges payable for 2022/3 and the interim service charges payable for 2023/4. The Respondent has again failed to engage with the proceedings. The Tribunal indicated that in respect of the interim service charge for 2023/4, the Tribunal can only consider the reasonableness of the estimate; the quality of the service cannot be assessed at this stage.
6. Ms Hawkins, the lead tenant, indicated that the tenants are likely to come back to the tribunal again to challenge the service charges for 2023/4 when the final accounts have been prepared. The tenants would wish to exercise their statutory Right to Manage. However, the commercial premises currently exceeds the statutory maximum of 25%. They must therefore wait for the amendments introduced by the Leasehold and Freehold Reform Act 2024 which will increase this limit to be enacted.

The Current Application

7. On 13 February 2024, the Tribunal gave Directions. Pursuant to this, the parties have produced a Scott Schedule of twenty pages which challenges 39 items (at p.42). This includes all items of expenditure in the 2022/23

accounts. The Respondent has responded to these challenges. On 27 May, the Applicants filed a Reply (at p.62).

8. The Respondent was directed to disclose particulars relating to the insurance. The Respondent has failed to comply with this direction. The Applicants have filed a statement of case; the Respondent has not. Five of the six Applicants have filed witness Statements; the Respondent has filed no evidence.
9. On 9 April 2024, the Tribunal set the application down for hearing on 23 and 24 July. On 5 July, the Applicants filed the Hearing Bundle.
10. On Friday, 19 July, Mr Ronni Gurvits LLM applied on behalf of the Respondent to adjourn the hearing. On the same day, Judge Vance refused the application. On Monday, 22 July, Judge Vance refused the application for a second time after it had been renewed by Mr Gurvits.
11. At 10.00 on 23 July, the Tribunal inspected the Property. A number of the Applicants were present. The Respondent did not attend.
12. At 13.30 on 23 July, the Tribunal commenced the hearing. Ms Nicola Hawkins (Flat 2) has acted as lead applicant. She appeared on behalf of the Applicants accompanied by Mr Adam Mason (her partner), Ms Joanne Chung (Flat 3), Mr Andrew Fitch (Flat 4), Ms Monica Madan (Flat 5) and Mr Kai Shum (Flat 6). All have provided witness statements and gave evidence.
13. Mr Joshua Cullen (Counsel) appeared for the Respondent. He was not accompanied by anyone from the Respondent or his Instructing Solicitor. He had been instructed at a late stage. Mr Cullen realistically recognised that there was no ground for renewing the application for an adjournment for a third time.
14. A number of further documents were produced at the hearing:
 - (i) Ms Hawkins provided a schedule of the reductions which had been made by Judge Dutton and which should have been credited to their service charges accounts.
 - (ii) Mr Cullen provided a set of the service charge demands that had been issued to the tenants.
 - (iii) Ms Hawkins provided a drone video which illustrated the state of the roof.
 - (iv) Mr Cullen provided the one page statement of accounts which Martin Heller had produced for 2022/3, dated 6 December 2023. Although it

purported to be accounts for the year ending 25 December 2023, it only certified the expenditure to 6 December 2023. Mr Cullen told us that the service charge year ran from 1 December to 30 November.

15. During the hearing on 23 and 24 July, the Tribunal heard evidence from Ms Hawkins, Mr Fitch, Mr Mason, Ms Madan, Ms Chung and Mr Shum. A detailed timeline was provided at p.563-565 of the Bundle. However, this was not cross-referenced to the documents in the bundle. Having concluded the evidence, the Tribunal worked through the Scott Schedule. There was only sufficient time to consider the issue of insurance. The Tribunal therefore adjourned the hearing for a further date to be fixed for the convenience of the parties.
16. On 29 July, having consulted the parties on available dates, the Tribunal notified the parties that the adjourned hearing would be 13 September and gave further Directions.
17. On 14 August, the Applicants filed (i) an updated copy of their timeline relating to the roof works cross-referenced to the Application Bundle (6 pages), (ii) a Supplementary Bundle of emails (112 pages) and (iii) a Supplementary Statement relating to the roof works.
18. The Tribunal directed the Respondent to provide the following by 14 August:

(i) a running statement of account for each tenant specifying all service charges, ground rents, administration charges and any other sums which have become due since 19 September 2019, together with all payments made and any sums credited to the tenant's account (including any credit arising from the Tribunal's decision in LON/00AR/LSC/2023/0007).

(ii) A copy of the guarantee, if any, provided in respect of the works which were executed to the roof of the premises in January 2023.

The Respondent failed to comply with this Direction. On 16 August, Mr Ronni Gurvits stated that he would provide this by 30 August. He failed to do so.

19. The Tribunal directed the Respondent to provide the following by 28 August:

“a Skeleton Argument addressing the issues of the liability to pay and the reasonableness of the items challenged in the Scott Schedule (except for insurance in respect of which full argument has been heard).”

The Respondent failed to comply with this Direction.

20. On 30 August, the Applicants applied for an order debaring the Respondent from taking any further part in the proceedings. On 5 September Judge N Carr considered the application and made the following direction:

“by 4pm on 9 September 2024, the Respondent must send to the Tribunal and to the Applicants by email any submissions and evidence on which it intends to rely, to persuade the Tribunal that it should not be debarred from further participation at the hearing.

Failure by the Respondent to comply with paragraph (1) above will automatically result in the Respondent being refused the entitlement to make any submissions on the question of debarment without further order, pursuant to rule 8(2)(e) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.”

The Respondent did not send any submissions to the tribunal.

21. On 13 September, the Tribunal concluded the hearing. Mr Sam White (Counsel) appeared for the Respondent. He was not accompanied by anyone from the Respondent. He was unable to offer any explanation for the Respondent’s failure to comply with the Directions. He stated that Mr Cullen was unable to attend. The Respondent had failed to book him for the hearing and Mr Cullen had another professional commitment which he was unable to break. The Tribunal debarred Mr White from advancing any positive case on behalf of the Respondent. It was rather for the Applicants to establish a prima facie case that any service charge was not payable or was unreasonable. However, having regard to the overriding objective, the Tribunal permitted Mr White to make any submissions on points of law. On most items which were challenged, his response was that this was a matter of evidence for the Tribunal. There was little more that he could say, given the Respondent’s failure to engage with these proceedings.
22. Ms Hawkins again spoke on behalf of the Applicants, accompanied by the tenants who had attended on the previous occasion. The Tribunal worked through the Scott Schedule and concluded the hearing at 16.15.
23. On 3 October 2024, the Tribunal reconvened to discuss our decision. The application has been difficult to determine. The Applicants are litigants in person. In their Scott Schedule, they have tended to raise questions, rather than specify the grounds upon which they contend that the service charges are not payable or are unreasonable. They have provided a mass of material. A large number of email chains have been provided which must be read in reverse. There has been considerable duplication of the email chains.

The Inspection

24. The Building is situated in central Romford and is approached via the pedestrianised shopping precinct in South Street. The six flats are situated above a retail unit which is currently occupied by a retail unit, Gadcet, which is a phone repair/gadget shop. To the rear, there is a carpark which is operated and managed by the Liberty Shopping Centre. This creates potential difficulties of access for repairs.
25. The Building originally consisted of a ground floor shop with offices on the two upper floors. In 2018, it was converted to create six flats above the ground floor shop. Flats 1, 2 and 3 are on the first floor, and Flats 4, 5 and 6 on the second floor. A large extension was built to the rear of the property to accommodate the residential flats. The flats have UPVC double glazed units.
26. The Property has a flat roof which we were unable to inspect. However, the drone video revealed a flat roof which is split into two parts at slightly different levels, the rear section being built at the time of the conversion. There is a subtle central ridge which descends to either side of box gutters. We understand that the front section of the roof was also renewed at the time of the conversion. It is the rear section where the main problems of water penetration have arisen. It was unclear to us whether these problems have now been resolved.
27. The Tribunal inspected the rear of the Building. The rear wall is rendered and has been repaired following damage caused by an overflowing rainwater hopper which appears to have allowed water to penetrate. The detailing where the first floor of the property backs onto the Shopping Centre parking area is poor. This seems to have been the cause of the water penetration to the surrounds of the windows to Flat 5.
28. A new water drainage pipe has been added to the rear of the Building. We were told that when the property was converted, there was a common drainage system for both foul and storm water. In 2020, new pipe work was installed to separate these which now feed into a manhole which also serves the commercial premises, including those occupied by Greggs and Kentucky Fried Chicken. The tenants complain that the drain regularly blocks. They attribute this to fat from these commercial units blocking the drains. The cost of clearing the drains is passed on to the tenants through their service charge,
29. The entrance to the six flats is to the left of the shop Building in South Street. There are tiles around the entrance door. A number of these had fallen away. There was an imminent danger that some of the tiles above the door might fall off which was an obvious health and safety risk both to the tenants and shoppers in this pedestrianised area.

30. On the ground floor in the communal hall there was a wooden boxed area containing all the meters for the property. The cupboard door did not seem to us to comply with current fire regulations. The communal staircase was narrow and extremely steep.
31. We first inspected Flats 4 and 5 which are on the second floor. On the top landing, the ceiling was stained as a result of water penetration.
32. We first inspected Flat 5 which is at the rear of the Building. There was evidence of extensive water penetration into the bedroom, bathroom and living room. Water had penetrated the partition wall between the bedroom and the internal hallway and there was extensive staining to both walls. There was also staining to the bedroom ceiling where the plaster had blistered. The staining to the bathroom ceiling was less severe. At the hearing, we were told that works had last been executed in December 2023.
33. Flat 4 is at the front of the Building. There was evidence of past damp penetration by the light fitting in the bathroom. We were told that water had penetrated the living room/kitchen. There was evidence of significant water penetration by the front windows where the plasterwork was blistered. This seems to have been due to the finishes by the external brick work.
34. Flat 2 is on the rear of the first floor. It is described as a two bedroom flat. However, the second bedroom has no external ventilation. It merely has a window looking out into the kitchen. This is not suitable for sleeping accommodation. The windows in the living room/kitchen and main bedroom look out onto the Shopping Centre car park. There was mould on the windows. The dampness seemed to be linked to defective finishes between the asphalt on the carpark and the brickwork. The walls below these windows are below the level of the carpark. The windows are small and would not be a means of escape in event of fire. In any event, there are large bars on the exterior of the windows. The only route from the main bedroom is through the living room/kitchen and out of the front door onto the communal staircase which is steep and narrow.
35. The Tribunal did not inspect Flats 1, 2 and 6.
36. The Tribunal is concerned that so many problems should have occurred so soon after the conversion. There have been serious problems with the roof, the exterior walls, electrics and the drainage. We must assume that all the relevant planning permissions and building regulation consents were obtained, for what to us appeared to be a very low-quality conversion. We understand that the flats are extensively dry lined with plasterboard which may conceal the extent of the dampness. These problems need to be addressed in a comprehensive manner. We are satisfied that patch repairs will only result in more serious issues manifesting themselves in future.

37. An issue is who will bear the cost of these repairs. This Tribunal is only concerned with the payability and reasonableness of any service charges that these tenants are required to pay. We have no jurisdiction to consider whether either the landlord or the tenants might have a claim against the Developer. Any claim for disrepair against the current landlord is a matter for the County Court.

The Applicants

38. Mr Pham is the tenant of Flat 1. This is a studio flat on the first floor at the rear of the property which looks out directly onto the carpark. Mr Pham sublets his flat. He did not make a witness statement and did not attend the hearing.
39. Ms Hawkins is the tenant of Flat 2. She has acted as the lead tenant. Ms Hawkins has a background in property management, as an engineering administrator in Knightsbridge. Flat 2 is a two bedroom flat on the first floor at the rear of the property which looks out directly onto the carpark. She lives in the flat with her partner, Mr Mason. Both have made witness statements and gave evidence.
40. Ms Hawkins acquired her flat in February 2022 as a first-time buyer. She was told that her service charges would be some £800 per annum. The Leasehold Property Enquiries (“LPE1”) was completed by Mr Gurvits on behalf of Eagerstates and is dated 22 November 2021 (at p.391-398). He stated that the service charges were not anticipated to increase by more than 10% over the next 2 years. There was no reference to the Section 20 Notice which had been served in June 2021 in respect of the roofing works. Ms Hawkins was the lead tenant in the 2023 proceedings before the FTT. Ms Hawkins has computed that she is entitled to a refund of £906.30. This has not been credited to her service charge account and she has had to issue proceedings in the County Court to enforce the award.
41. On 6 December 2023 (at p.186), Ms Hawkins received the expenditure accounts for 2022/23 and was concerned that the service charge expenditure was £51,956, compared with the budget of £32,488 (60% over budget). When she questioned the level of the service charges, she was threatened with forfeiture. Ms Hawkins is extremely concerned about fire safety within her flat. The only windows have bars on them, her only means of escape is onto the cramped staircase. She questions whether there have been monthly fire checks. She has found the situation extremely stressful and has contacted her MP and the Ombudsman. The Tribunal notes that the bars on windows and staircase is the same as it was when Ms Hawkins bought her flat.
42. Mr Mason has also made a witness statement and gave evidence. He works from home. He has previously worked as an operations manager for a property management company which managed a portfolio of

HMOs. He spent over an hour with the team who inspected the drains. They were surprised at how the drains had been re-routed using internal piping for external plumbing. They also expressed surprise that the tenants were being charged 100% of the cost of unblocking the shared drain. The cause was more likely to be the commercial premises. He questions the sum charged for the fire safety signage and suggested that 100 signs could be bought on line for £20/£30.

43. Ms Joanne Chung is the tenant of Flat 3. She is a solicitor. She bought her flat in December 2018. This is a two bedroom flat on the first floor at the front of the property. It had been occupied by a family member. She now sublets her flat. She questions the qualifications of the contractors used by Eagerstates and is concerned about the quality of the service that they provide. A particular concern is the tiles surrounding the front entrance door. Although they were repaired at considerable expense in 2021, they fell off some 12 months later and are still in a dangerous condition.
44. Mr Andrew Fitch is the tenant of Flat 4. This is a two bedroom flat on the second floor at the front of the property. He occupies his flat. He purchased his flat in October 2019. His main concerns are the failure of Eagerstates to respond to complaints and the inept contractors that they appoint. He complains of “the meaningless reports” for which the tenants are required to pay. He complains of the continuing damp problems that have affected his flat since April 2020. The Respondent has failed to address problems with the coving stones. His front windows have been damp and mouldy. Works have only been executed when this application was set down for heating.
45. Mr Urish Patel and Ms Monika Madan are the tenants of Flat 5. They acquired their flat in June 2018. This is a one bedroom flat on the second floor at the rear of the property. They sublet their flat. The flat has been affected by water penetration over many years. The first leak was in April 2019. The leaks were apparent when we inspected the flat. Ms Madan estimates the cost of making good the damage to her flat at some £4,000. She is still pursuing an insurance claim with Eagerstates. She has also suffered a substantial reduction in the rent that she has been able to charge for her flat. The situation has left her feeling powerless and unsupported, creating a significant financial burden and causing daily stress and anxiety.
46. Mr Kai Shum is the tenant of Flat 6. This is a one bedroom flat on the second floor at the rear of the property. He contributes 15% towards the common parts service charge. He sublets his flat. He acquired the flat in September 2022. His LEP1 dated 5 October 2021, is at p.399-406. Mr Ronni Gurvits again stated that the service charges were not anticipated to increase by more than 10% over the next 2 years. There was no reference to the Section 20 Notice which had been served in June 2021 in respect of the roofing works. His flat has been affected by water

penetration. He has twice had to take down his ceiling. There has also been damp around his window frames. Mr Shum complains that the Respondent has not credited the sum of £505.25 to his service charge account pursuant to the 2023 FTT decision. He has sought to challenge the extent to which the actual expenditure has exceeded that which had been budgeted. The Respondent has rather issued proceedings against him in the County Court (see p.373-375). On 4 March 2024 (at p.376), the Respondent had sought to recover a sum of £4,437.71 from his mortgagee. He has filed a defence to the County Court claim.

The Leases

47. The Tribunal has been provided with a copy of the lease for Flat 2 (at p.105-131). The lease is dated 13 July 2018 and is for a term of 130 years from 1 January 2018. The tenant paid a premium of £225k.
48. By Clause 5 (1), the landlord covenants to repair, maintain, renew, uphold and keep in good and substantial repair and condition the main structure of the Building, including the roofs, main water tanks, main drains, sewers, gutters, rain water pipes and other services. By Clause 5(3), the landlord covenants to insure the Building.
49. By Clause 4(1), the tenant covenants to pay the service charge rent. The Third Schedule relates to the service charge. The tenant may be required to pay an interim service charge. By paragraph 6, the landlord or its agent is required to serve on the tenant as soon as practicable after the expiry of each account period a certificate specifying (a) the total expenditure for the year, (b) the amount of the interim service charge paid, and (c) any excess or deficiency of the service charge over the interim charge. The expenditure is to be certified by an accountant and supported by documents which will be made available to the tenant on request.
50. The residential tenants are required to pay 50% of any expenditure relating to the Building which includes the ground floor commercial premises (“the Building service charge”). The tenants are required to pay 100% of the expenditure relating to the residential accommodation (“the Common Parts service charge”. The share by each flat is Flat 1: 12%; Flat 2: 18%; Flat 3: 20%; Flat 4: 20%; Flat 5: 15%; and Flat 6: 15%.

The Law

51. Section 18 of the Landlord and Tenant Act 1985 (“the Act”) defines the concepts of “service charge” and “relevant costs”:

“(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.”

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

52. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.”

53. The Supreme Court has recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. A landlord is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the 1985 Act to determine whether the landlord has acted reasonably (see [33]).

54. In *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC) at [28], Martin Rodger KC, the Deputy President, restated the important principle that it is for the party disputing the reasonableness of sums

claimed to establish a prima facie case. However, the Tribunal must consider this in the context of where there has been a history of mismanagement and the landlord has refused to engage with its tenants

55. Section 20 of the Act requires a landlord to consult in respect of and “qualifying works” where the relevant contribution of any tenant will exceed £250. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants’ association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee’s estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

56. If a landlord fails to comply with the statutory duty to consult, the service charge in respect of the “qualifying works” is capped at £250 per tenant. Section 20ZA gives the tribunal a discretion to dispense with all or any of the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to dispense with the requirements.

The Background

57. In 2018, the Building was converted to create six flats. A three storey rear addition was added with a flat roof. There is shop on the ground

floor. The conversion was carried out by South Street Properties Limited (“the Developer”). The contractor was Focus Building Solutions Limited. On 6 February 2018 (at SB.8), Widopan products issued a guarantee in respect of their materials that had been used for the roof.

58. In June 2018, Ms Madan and Mr Patel acquired the lease to Flat 5 as a buy-to-let investment. In December 2018, Ms Chung acquired the lease to Flat 3. The Building was being managed by Hilbery Chaplin. On 20 April 2019 (at SB.4), Ms Madan complained about a roof leak into the bathroom. Flat 6 was facing similar problems. She provided two photos.
59. There is a reference in the Bundle to a report by Widopan Products, dated 9 August 2019. The report included 12 photographs of various aspects of the roof which were defective and incorrectly fitted. The report discusses a number of potential issues causing water ingress. On 30 August 2019 (at SB.16), Mr Fitch complained of water penetration which was affecting the three top floor flats.
60. On 10 September 2019 (at SB.22), Hilbery Chaplin informed the tenants that the Respondent had acquired the freehold and that Mr Ronni Gurvits of Eagerstates would be managing the Building. Despite the change of ownership, the tenants continued to liaise with the Developer in respect of the roof leaks. In June 2020 (at SB.30), the Developer arranged for repairs to the roof but informed the tenants that any future contact should be with the Respondent.
61. The Respondent acquired the freehold at auction. It should have been apparent to the Respondent that the conversion had been carried out to a low standard and that there were a range of problems relating to the roof and the drainage. The Respondent should have obtained a report from a surveyor to assess the extent of the disrepair and to inform a planned maintenance programme to address the address the disrepair over a reasonable period of time at a cost that the tenants could afford. The Respondent failed to do this.
62. In August and September 2020, major repairs were executed to the drainage requiring all the tenants to vacate their flats. We were told that when the Building was converted, there was a common drainage system for both foul and storm water. A new water drainage pipe was added to the rear of the property. New pipe work was installed to separate these which now feed into a manhole which serves the neighbouring commercial premises. Mr Mason was told that the landlord had used internal piping for the external plumbing.
63. Throughout this period, there were continuing problems of water penetration. On 23 November 2020 (at SB.40), Ms Madan complained that she had been chasing up repairs for the last two years and enclosed two photographs of the damage to Flat 5. On 29 December 2020 (at SB.42), Mr Fitch complained that the roof was still leaking into Flats 4,

5 and 6. He inquired whether there is any warranty for the defective roof. Further complaints were made including on 31 January 2021 (SB.71), 11 February 2021 (at SB.68), and 13 April 2021 (at SB.75). The tenants made it clear that they did not expect to have to pay for the works as the works should be covered by a warranty. On 9 September 2021 (at p.657), Ms Chung continued to insist that the Respondent should be pursuing a claim against the Developer.

64. On 27 April 2021, Eagerstates served the Notice of Intention (at p.603). The tenants were consulted on the options of (i) a new roof or (ii) roof repairs. The tenants were invited to respond by 1 June 2021. It seems that the tenants did not respond.
65. On 9 June 2021, Josh Carroll BSc inspected the Building for the landlord. In August, he prepared a Planned Preventative Maintenance Schedule (at p.614-624). The report was superficial and did not identify any of the disrepair and defects which were only too apparent to us on our inspection and which were satisfied would have been present in 2021. He seems to have been unaware of the problems with the roof and suggested that the timing for any maintenance works was some 4-5 years.
66. On 4 June 2021 2021, Eagerstates served the Notice of Estimates (at p.606). Two estimates had been obtained in respect of each options: BML Option 1: £34,542; Option 2: £3,492; FTA Roofers Option 1: £28,11.56; Option 2: £2,300 (all inclusive of VAT). The Respondent proposed to proceed with the FTA Roofers Option 1. Eagerstates stated that they would charge a supervision fee of 15%. The tenants were invited to respond within 30 days.
67. These works did not proceed for 18 months. The tenants were concerned about the proposed cost of the works. On 21 June 2021, the tenants obtained an estimate from Mendix Roofing at a cost of £9,540 (at SB.92). On 20 July 2021 (at SB.85), Mr Gurvits agreed to use Mendix. On 30 July 2021 (at p.694), Eagerstates collected an interim service charge in respect of this estimate. The tenants paid this charge. The sums were not used in respect of these works, but were rather credited to the tenant's service charge accounts and set off against other expenditure. There seem to have been two reasons why Mendix were not used. First, Mendix were unable to secure the necessary licence to erect scaffolding in the carpark. Secondly, Eagerstates required the tenants to sign a waiver, absolving the landlord from any liability in respect of the works. The tenants were unwilling to sign this.
68. On 9 November 2021 (at p.642), Marc Granditer confirmed that the Developer was not accepting any responsibility for the works. He advised the tenants to instruct a surveyor to identify the works that were required.

69. On 22 February 2022, Ms Chung obtained a report from Darren Eva FRICS (at p.573-586). The report was based on a limited internal and external inspection and asserted that it was intended to convey valuation advice and should not be used for any other purpose. Mr Eva concluded (at p.580):

“It is clear that the flat roof requires significant attention. I believe that it has been inadequately installed and that a comprehensive replacement of the roof is what is now required. Any further attempt to affect a repair as opposed to complete replacement of the roof cover in its entirety is simply “kicking the problem” down the road or deferring the inevitable. It must be remembered that these are significant issues that have manifest very soon after construction and they will continue, in my opinion, to deteriorate further as the roof ages. This is due to fundamental problems with the roof, which has an inadequate fall, incorrect installation and also questions now about the decking upon which the roof is placed.

Aside from this, there are issues with the upstands and parapet walls to the periphery, which have now, sadly, been made worse by the installation of the Acrypol that has been daubed extensively. This has in my opinion, been a further contributory factor of further rapid failure of the brickwork.”

70. In February 2022, Ms Hawkins acquired Flat 2. In September, Mr Shum acquired Flat 6. Neither were informed by the Respondent in their LEP1s of the significant works that were proposed.
71. The problems of water penetration persisted. On 14 September 2022 (at p.669-677), Ms Madan sent Mr Gurvits a number of photographs illustrating the extensive damage that was being caused to her flat. On 15 September (at p.688), Mr Gurvits informed the tenants that the works had been instructed to SFM Roofing Contractors. On 16 September (at p.700), Ms Hawkins questioned how the Respondent could use SFM “who wasn’t in the original section 20 process”. On 16 September (at p.722), Ms Hawkins repeated that the contractor should be selected through the correct legal process.
72. There was an extensive exchange of emails which is summarised in the Applicant’s detailed timeline. This addressed the scope of the works that were to be executed, who was to execute the works and any guarantee that would attach to the works.
73. On 13 October 2022 (at p.786), Ms Madan complained about the delays. Her flat was in a terrible condition and it was leaking non stop. On 20 October, BML Security & Facilities Management attended to execute emergency repairs and carried out dye tests to investigate the source of the leaks.

74. On 21 October 2022 (at p.805), Ms Madan wrote to Mr Gurvits asking how long the temporary fix was going to last. She complained of the damage that was being caused to her flat:

“The damage to my walls which are torn and full of mould, ceilings are in a terrible condition, electric wirings are currently unsafe (2 bedroom lights have stopped and damaged because the water has gone into the wirings). The severe mould in the bedroom is affecting my tenant’s health and hence my flat is currently not habitable.”

She complained that the Respondent had completed the section 21 process in April 2021. The tenants had paid for the works. However, the Respondent had failed to action the repairs. On 23 October (p.802-803) she complained that her tenants had been putting buckets and glasses all around the flat to collect the leaking water. She enclosed the photos which are at p.802-803. On 21 November (at p.816-8), Ms Madan complained that the mould in Flat 5 was increasing affecting both the bedroom and the living room. Further photos were enclosed.

75. In December 2022, Security & Facilities Management carried out works to the roof. Scaffolding was provided by London South East Scaffolding. The total cost of the works, including the management fee, was £21,347.20. The Tribunal have not been provided with the specification of works against which the contractor was asked to quote. The works were executed during a period of adverse weather. They were completed in January 2023. However, it is apparent that there were ongoing problems of water penetration which the contractor was required to return on site to resolve.
76. On 5 December 2022 (at p.183), Eagerstates sent the tenants the service charge expenditure for 2021/22 and the interim service charge for 2022/23. The tenants queried why the roofing works appeared in the budget for 2022/23, given that they had already paid for the works. On 23 December, they issued their first application which was determined by the FTT on 27 July 2023 (LON/00AR/LSC/2023/00070).
77. The Applicants complain about the quality of the roofing works. On 11 May 2023 (p.937), Mr Fitch complained that water was leaking through the electrical fittings in his bathroom. On 24 May (p.90), Ms Madan complained that the roof repairs had failed. Her tenants were still paying a reduced rent and were living in a flat that was not fit for habitation. On 31 May (p.898), Mr Gurvits suggested that it was not the roof that had failed; this was rather due to drainage which the caused damage to the roof. On 16 June (at p.941), Ms Hawkins reported a new damp patch in Flat 2.
78. On 6 December 2023 (p.186), Eagerstates sent the Applicants the service charge expenditure for 2022/23 and the interim service charge for

2023/24. The actual expenditure exceeded the budget by 60%. On 20 December, the Applicants issued their current application to the tribunal challenging the service charges for 2022/23 and the budget for 2023/24.

79. On 17 April 2024 (p.952), Mr Fitch reported that there was damp on the living room in Flat 4. On 9 May (p.948), Mr Fitch reported that the roof was leaking again and had found its way to the light fitting in his toilet.
80. At the hearing, the Tribunal was told that the main problems of water penetration had been resolved in December 2023. However, it was apparent that there are still problems of dampness, particularly due to defects in the render. The Building was not in a good state of repair. It remains unclear whether the roof is now in a good state of repair.

The Scott Schedule – the Issues to be Determined

81. The Applicants have served a Scott Schedule that extends to 39 items. Items 1 to 28 relate to the expenditure for 2022/23; items 29-39 relate to the budget for 2023/24. The main challenge is to the quality of the services that have been provided.
82. The Tribunal explained to the Applicants that the Tribunal could only consider the reasonableness of the sums that had been included in the budget for 2023/24. We would need to assume that the services would be provided to a reasonable standard. A landlord has a considerable discretion as to what to include in a budget (see [53] above). It is only at the end of the financial year that a Tribunal can assess the actual expenditure and the quality of the services. In the light of this indication, the Applicants withdrew their challenges to the 2023/24 budget, save in respect of the sum included for insurance which we are able to assess.
83. The challenges to the 2022/23 expenditure are based on the service charge accounts which the Respondent sent to the Applicants on 6 December 2023 (at p.186). This is no more than a list of the invoices. In some cases, these are grouped together; in others they are listed separately. Thus, works to the roof are listed under four separate headings. In assessing the reasonableness of the expenditure, the Tribunal has sought to identify the different heads of expenditure, dealing first with the most significant items.
84. A further problem is that in respect of a number of the items challenged, the Applicants do not plead why they assert that the expenditure is not payable or is unreasonable. They rather raise a number of questions, most of which have not been addressed by the Respondent. It is not the role of this Tribunal to carry out an audit of the service charge accounts. It is rather for the tenants to adduce a prima facie case that the service charge items are not payable pursuant to the terms of their lease or are unreasonable whether because of the cost or the quality of the service.

85. In considering the cost of the works to the roof, we must have regard to the statutory duty to consult. A number of items which are challenged in this application were also challenged in the previous application which was determined on 27 July 2023 by Judge Andrew Dutton and John Naylor MRICS (LON/00AR/LSC/2023/007) (“the FTT”). We have due regard to their findings.
86. In respect of a number of items, the evidence is less than satisfactory. However, the Applicants should not be prejudiced by the fact that the Respondent has failed to engage with this application. We are required to determine this application on the evidence before us.

Part 1: Building Service Charges (50% charged to the tenants)

1.1 Insurance

87. The Applicants challenge the sums charged for Insurance and Brokers fee, namely £5,831.48 for 2023/24 and £6,123.05 included in the budget for 2024/5. In 2023, the FTT reduced the sum charged for 2021/22 from £6,803.50 to £3,500 and the budgeted figure from £7,143.68 to £3,500 (at [9] – [17] of their decision).
88. The Applicants contend that the sums charged are excessive having regard to this decision. They have provided further submissions at p.422-423 which highlight the failure of the Respondent to comply with the Directions given by the Tribunal to satisfy it that the Respondent has taken reasonable steps to test the market (see [8] above). They also referred us to the documents at p.424-557. Mr Cullen, for the Respondent, referred us to the certificate of insurance, dated 31 August 2023 (at p.271)
89. The FTT in 2023 concluded that the insurance was unreasonable and that a reasonable estimate for the 2022/23 budget was £3,500. The Respondent has adduced no evidence to persuade us that this conclusion was wrong. Further, they have failed to comply with the Directions. We are therefore satisfied that a reasonable sum for insurance was £3,500 for 2021/22, but we allow an uplift of 5% increasing this to £3,675 for 2022/23 and £3,860 for the budget for 2023/24. The reduction for 2022/23 is £2,156.48.

1.2 Roof Works: £23,567.80

90. This challenge relates to the following items in the service charge accounts: (i) Roof works as per Section 20 Notice: £20,207.50; (ii) Emergency roofer call out: £2,220.60; (iii) Gas due to icy conditions: £509.70; and (iv) unblocking of drains & removal of skylight prior to roof works: £630. Total: £23,567.80.

91. These challenges relate to the following invoices:
- (i) BML Security & Facilities Management (12.12.22): £2,220.60 (at p.284) for emergency call out to Flat 5 due to leaks. Dye tests were carried out to investigate the source of the leaks.
 - (ii) Superior Facilities Maintenance (3.1.23): £630 (p.287) to unblock all drain outlets and to remove a sky light which had been left on the roof by Developers prior to the commencement of roofing works.
 - (iii) London South East Scaffolding (3.1.23): £2,125 (p.281) to supply a roof anchor system.
 - (iv) Superior Facilities Maintenance (4.1.23) £509.70 (p.286) for additional gas used due to daily icy conditions.
 - (v) Superior Facilities Maintenance (5.1.23): £1,980 (at p.282) for additional work on roof due to weather conditions
 - (vi) Superior Facilities Maintenance (8.1.23): £13,020 (at p.277): install new felt roof and to install a waterproofing system to the parapet wall to prevent water penetration. The invoice referred to a 10-year guarantee.
 - (vii) Eagerstates (20.11.23): £738.90 (p.283) for “additional admin fee for Roof Works Section 20”.
 - (viii) Eagerstates (9.1.23): £2,343.60 (p.279) for “admin fee for section 20 for roof works”.
92. No date is specified for the works executed by BML Security & Facilities Management. However, it is apparent from the email trail at p.796-806 that these works were carried out between 20 and 24 October 2022. Ms Madan had been complaining of the ongoing water penetration to Flat 5.
93. The further seven invoices all seem to relate to the roofing works executed by Superior Facilities Maintenance between December 2022 and January 2023. The Tribunal is satisfied that all these invoices relate to the same package of works, albeit that (vii) and (viii) are the supervision fees charged by the managing agents. Thus, contractors charged a total of £18,264.70 whilst Eagerstates charged £3,082.50. The total is £21,347.20.
94. Although the Respondent describes these as “Section 20 works”, the statutory consultation had started some 20 months before the works were executed:
- (i) On 27 April 2021, Eagerstates served the Notice of Intention (at p.603). The tenants were consulted on the options of (i) a new roof or (ii) roof repairs.

(ii) On 4 June 2021 2021, Eagerstates served the Notice of Estimates (at p.606). Two estimates had been obtained in respect of each options: BML Option 1: £34,542; Option 2: £3,492; FTA Roofers Option 1: £28,11.56; Option 2: £2,300 (all inclusive of VAT). The Respondent proposed to proceed with the FTA Roofers Option 1. Eagerstates would charge a supervision fee of 15%.

95. These works did not proceed for 18 months, for reasons discussed above. The Applicants have provided a detailed timeline relating to these works which is uncontradicted. They object to these works on a number of grounds:

(i) These were inherent defects and not items of disrepair. We were referred to the Upper Tribunal decision in *Tower Hamlets LBC v Lessees of Brewster House and Malting House* [2024] UKUT 193 (LC).

(ii) The Respondent should have looked to the Developer to remedy these defects which were only required because of the negligent manner in which the extension had been executed.

(iii) The Respondent did not comply with the statutory consultation procedures. Superior Facilities Maintenance was not a contractor from whom an estimate had initially been sought.

(iv) The whole process was flawed. The Applicants are not clear as to what works have been executed. The Respondent did not engage a surveyor to investigate the state of the roof and draw up a proper specification of works. This had been identified by the FTT in 2023 (at [58]). Superior Facilities Maintenance did not carry out the replacement of the roof as had been contemplated in the Notice of Intention. They have still not been provided with any guarantee for the works, despite the Direction which we made on 29 July (see [18] above).

96. Mr White responded that this was a matter for the Tribunal to determine on the evidence before it.

97. In 2023, the FTT described the history relating to the roof works as “something of a mess” (at [44]). The FTT went on to state that it was “extremely difficult to make head or tail of this” (at [54]). The FTT concluded that it was reasonable to include £15,340 in the budget for 2022/23 for roof repairs (at [57]). The FTT suggested that the tenants had become “over-involved in the process”. We consider this criticism to be unfair. The tenants had legitimate concerns as to why a conversion which had been completed in 2018 with a new roof, should require a new roof within three years. They argued that the Respondent should look to the Developer to make good its negligent workmanship. This was a particular concern for Ms Hawkins and Mr Shum who had acquired their flats in 2022 and had not been notified of the pending works in the

landlord's response to their LPE1s. The FTT identified the heart of the problem (at [58]): the Respondent had failed to appoint a surveyor to inspect the roof and prepare a proper specification of works. We remain uncertain as to whether the works related to both sections of the roof, or just the rear section, and the extent to which there were defects to the parapet walls. It also remains unclear whether the roofs are now in a proper state of repair.

98. Turning to the arguments raised by the Applicants, the Tribunal rejects the suggestion that the defects to the roof were inherent defects which fell outside the landlord's liability to repair. We are satisfied that the roof was in disrepair and that the Respondent was obliged to put it into a proper state of repair.
99. Secondly, whilst it was open to the parties to look to the Developer to remedy their negligent work, the landlord was not obliged to take legal action to compel the Developer to do so. It was a matter for the discretion of the landlord to determine whether it was cost effective to do so. It is not for this Tribunal to determine what, if any, remedy either the landlord or tenant has against the Developer. They must each take legal advice if wish to take this forward. There is no suggestion that the tenants were willing to fund or indemnify the landlord for any action that it might take against the Developer. The legal position for this Tribunal is clear. The Respondent, as landlord, is obliged to keep the roof in repair.
100. However, the Respondent failed to adhere to statutory consultation procedures. This relates to the major repairs to the roof for which the Applicants have been charged £21,347.20. We are satisfied that these are "qualifying works" to which the Section 20 consultation procedures applied. In the absence of compliance with these requirements, the contribution of each tenant would be capped at £250.
101. We first consider the emergency works carried out by BML Security & Facilities Management in October 2022 at a cost of £2,220.60. Only 50% of the cost (£1,110.30) have been passed on to the tenants. They were therefore not qualifying works. We are satisfied that these costs are payable.
102. On 27 April 2021 (at p.603), Eagerstates served the Notice of Intention and consulted the then tenants on two options. Option 1, a new roof, consisted of the following works: "remove 5 skylights; strip roof back to joists; install new timber frames for skylights; install new 18 mm OSB boards using 65 mm ring-shanked nails; prime the roof deck using a bitumen primer, two layers of 4mm Axter underlay to be laid in hot bitumen; every felt join to be bled with bitumen to ensure watertight seal; remove lead outlets, 2 new lead outlets to be installed, welding into place, replace skylights". This is a reasonable specification, albeit not of quality that would have been produced by a surveyor. It remains unclear whether this extends to both sections of the roof. Neither does it specify

any works to the parapet walls. Option 2 was patch repairs, namely “felt any damages areas of the roof, prime the roof deck and seal using an Aquapol sealant”.

103. On 4 June 2021 (at 606), Eagerstates obtained two estimates for the new roof. BML quoted £34,542.00 whilst FTA Roofers quoted £28,111,56. The Respondent stated its intention to proceed with the Option 1 quote from FTA Roofers. The Respondent could not be criticised if, having due regard to the observations that it had received, it had proceeded with Option 1. The lease required the landlord to repair the roof. The landlord had the legal duty to determine what works were required to put the roof in a proper state of repair.
104. Works did not commence until December 2022. The critical fact is that neither FTA Roofers nor BML executed the works. Superior Facilities Maintenance rather carried out works at a cost of £18,264.70 (including scaffolding). This contractor worked to a different specification, the invoice referring to: “install new felt roof, fit new flashings on roof and lower roof section, replace the current vent covers, repair coping stones where needed, parapet wall: supply and install a waterproofing system to prevent water from seeping in, ensure all areas are watertight and sealed”.
105. The Tribunal is satisfied that the Respondent would have been entitled to rely on the Notice of Intention which was served in April 2021, provided that it considered that the scope of the required works had not become more extensive. In the absence of a surveyor’s report assessing the state of the roof, the Tribunal cannot be satisfied on this point. However, we are satisfied that the Respondent was not entitled to instruct Superior Facilities Maintenance without serving a further Notice of Estimates, after the market had been tested by requiring at least two builders to quote for the same schedule of works. Good practice required a tender document prepared by a surveyor.
106. The statutory the statutory duty to consult is part of the statutory armoury to protect tenants from paying unreasonable service charges for works which are executed to a defective standard or at an unreasonable expense. The Respondent would have been justified in instructing Superior Facilities Maintenance had the six tenants agreed to this. Even if this had been a technical breach of the consultation requirements, a tribunal would have no hesitation in granting dispensation. However, the Applicants did not agree to this course of action. They dispute both the quality and the cost of the works.
107. When a landlord is dealing with six tenants, it is inevitable that different tenants will proffer differing views as to how the landlord should proceed. The Section 20 procedure allows a landlord to assess the collective view of its tenants. The landlord must have due regard to any

representations made by the tenants. It must then determine how to proceed.

108. The Tribunal finds that the Respondent failed to comply with its statutory duty to consult in respect of the major roofing works. The total cost of the works was £21,347.20. Only 50% (£10,673.60) would be passed on to the tenants. However, these costs are capped at £250 per tenant.
109. The Tribunal recognise that there has been a complex history to these works. In July 2021, the then tenants asked the Respondent to instruct Mendix, an option with the landlord was willing to consider. Ms Chung urged the Respondent to pursue a claim against the Developer. Had we been satisfied that the Respondent had acted reasonably and secured best value for the tenants, we would have considered granting dispensation. However, the Respondent has failed to engage with this application and has made no application for dispensation. The Tribunal has perused the detailed timeline relating to the roofing works, the extensive email trail at p.642-952 and the Supplementary Bundle. We accept the Applicant's case that there has been a lack of transparency. the Applicants did not consent to Superior Facilities Maintenance carrying out the works. They have had significant concerns about the quality of the works.

1.3 External Repairs: £5,415.

110. The Applicants challenge the following items which appear in the service charge accounts:
- (i) Render Works as per Section 20 Notice: £2,301.00. There is an invoice from Superior Facilities Maintenance (12.5.23) for £1,950 (p.349) to hack off defective and cracked render, apply new render and decorate the new render. There are photographs of the work which was executed at p.351-352. Eagerstates also claim £351 (19.7.23) at p.350 for "admin fee for section 20 for render works".
- (ii) Repointing Works: £1,260.00. There is an invoice from Superior Facilities Maintenance (17.5.23) at p.329 to remove all damaged pointing to prevent water ingress into the shop below and repoint where necessary. There are photographs of the work which was executed at p.330-333. April 2024, Ms Hawkins took photographs which are at p.1040-1047.
- (iii) Out of hours call out to remove front tiles: £474.00. There is an invoice from Superior Facilities Maintenance (25.6.23) at p.347 and photographs of the work at p.348.

(iv) Brickwork Repointing: £1,380.00. There is an invoice from Superior Facilities Maintenance (1.9.23) at p.356 in sum of £1,380 to repoint brickwork where needed and redecorate. There are photographs of the works at p.357-358.

111. Render Works as per Section 20 Notice: £2,301.00: The Applicants state that these works were in response to an emergency callout and that they have been charged twice as similar works were carried out 17 May. They deny that there was any consultation. The Tribunal is satisfied that there is no duplication and that the render works were separate from the repointing works. The Tribunal therefore allows the Superior Facilities Maintenance charge of £1,950. However, the Tribunal disallows Eagerstates' Section 20 consultation fee of £351. There is no evidence that any statutory notices were served. Indeed, no such consultation would have been required as no tenant has been required to pay more than £250.
112. Repointing Works: £1,260.00: The Applicants argue that these works were substandard. The render has already cracked and mould is now growing in the window seals of Flats 2 and 5. The problem to this argument is that the works were executed to prevent water penetration into the shop premises. The Tribunal therefore allows this charge.
113. Out of hours call out to remove front tiles: £474.00: The Applicants state that Eagerstates had these tiles replaced in 2021 by their contractor at a cost of £1194 to take them off and £1350 to have them put back up. This further work should not have been required. Mr White responded that this work was necessary. When the Tribunal inspected the Building, we were concerned at the state of the tiles around the entrance door (see [29] above). The works carried out in 2021 were clearly ineffective. The emergency works have done nothing to improve the situation. We disallow this sum. The Respondent must remedy this health and safety risk at the earliest opportunity.
114. Brickwork Repointing: £1,380.00: The Applicants contend that the charge is excessive. Checktrade have suggested a rate of £50-£60 per square metre (at p.1039). They have also obtained an estimate from Asgard Home Improvement Ltd in sum of £500, but which also adds an additional provisional sum of £600. The Applicants have not established a prima facie case that this charge is unreasonable.

1.4 Drainage Works: £4,215.48

115. This challenge relates to two entries in the service charge accounts, namely (i) Drain Services, unblocking and repairs: £2,595.48; and (ii) Drainage works from hopper: £1,620.00.
116. This relates to the following invoices:

(i) Aquevo (23.3.23): £491.16 (p.301-303) in respect of waste pipe leaking sewage at the rear. A strap had snapped and the pipe was bowing. There are photos of the defect at p.304-319.

(ii) Aquevo (29.3.23): £851.16 (p.294-296). Aquevo removed section of 100mm pipework and supplied and fitted new BS approved pipework. The time engaged was 4 hours. There are photos at p.297-300.

(iii) Aquevo (11.4.23): £683.16 (p.289-291). Two workmen attended on site for 2 hours to install spikes on the pipework to prevent people from standing and damaging the pipework. There are photos at p.292-293.

(iv) Aquevo (4.7.23): £570 (p.334-336). Aquevo attended to unblock the drains. There are photos at p.337-346.

(v) Superior Facilities Maintenance (9.5.23): £1,620 (p.353). This was an out of hours call to unblock a hopper leading to waste spilling everywhere. The pipes had bent due to the weight of the debris inside. Some pipework was displaced and all the pipework was repositioned to drain properly. There are photos at p.354-355.

117. The Applicants challenge the four invoices from Aquevo on the ground that they were not aware of the problem. The first three invoices relate to the new drainage system which was installed to the rear of the Building in 2020. The Applicants suggest that the works should not have been necessarily had these works been executed to a proper standard. The Tribunal is satisfied that a strap had snapped, possibly caused by anti-social behaviour. These repairs were necessary and we allow these sums.
118. The Applicants raised a separate argument in respect of the Aquevo bill of £570 to unblock the drains. The drains are served by a number of commercial premises including a Kentucky Fried Chicken. They suggest that the blockage was likely to be caused by fat from commercial premises. The Respondent has not justified why 100% of this charge has been made against the Applicants. We reduce this by 50%.
119. The Applicants challenge the Superior Facilities Maintenance invoice of £1,620 on two grounds. First, they were paying for the drains to be cleared. This work would not have been required if they had been cleared. Secondly, the cause seems to have been building debris from the works which were executed to the roof in January 2023. They should not have to pay for the negligence of the contractors. We agree and disallow this item.

1.5 Fire Safety and Health Risk Assessment: £408

120. The Applicants challenge the charge for a Fire Health & Safety Risk Assessment in the sum of £408.00. The invoice is at p.328. The Report,

dated 16 May 2023, is at p. 995-1028. The Respondent has included a figure of £450 for a similar report in 2023/24.

121. The Respondent had also obtained a similar report on 18 May 2022 at p.595-594. The FTT in 2023 had considered this charge of £340 (at [22] – [23]). The FTT allowed this sum, but stated that this should be kept under review.
122. The Applicants contend that an annual report is not necessary. Rather, there should be a review every two years and a fresh report every four years. We are satisfied that this charge should be disallowed. No more than a review could have been justified in 2023. This report is not a review. It rather covers much of the same ground as the report in 2022. A review would have been much briefer identifying what recommendations had been implemented and what works were still outstanding. We disallow this item.

1.6 Cleaning Windows and Gutters: £500

123. The Applicants challenge two items in the service charge account, namely £234 for window cleaning and £276 for cleaning all gutters and down pipes. The invoices from the Gresham Group are at p.272 and p.275. There are photos at p.273-274 and p.276-7. Both invoices are dated 18 September 2023, in respect of work carried out on 18 August 2023. A telescopic window cleaning pole was used for the windows.
124. The Applicants contend that the cost is excessive. Both jobs were done on the same day. The skylights were not cleaned. The Applicants have provided evidence from Checktrade (at p.558) which suggests that a reasonable rate for window cleaning is £20-£50ph and for gutter cleaning at £20-£30 per hour. Gleam Team Window Cleaning Specialists have also provided a quote of £144 inc VAT (at p.580). They suggest £150 for the windows and £175 for the gutters.
125. Mr White argued that the charges are reasonable. We disagree. We allow £325 (inc VAT), a reduction of £175.

1.7 Accountant's Fee: £570

126. Martin Heller have charged £570. Their invoice, dated 6 December 2023, is at p.360. They operate from the same office of Eagerstates. At the hearing on 24 July, the Respondent provided a copy of the accounts. They are a single sheet of paper. They are dated 6 December, but state that the service charge accounts for the period ending 25 December 2023. We were told that the service charge year runs from 1 December to 30 November. The accounts are no more than a summary of the invoices. One invoice for electricity was included twice. The account does not split the expenditure between the Building and the Common Parts service

charges. It provides no details of the income or any arrears. It gives no details of the reserve fund.

127. Paragraph 6 of the Third Schedule of the lease requires the service charge expenditure to be certified by an accountant. However, this is a simple exercise. Full Service Charge accounts are not required and have not been produced.
128. The Applicants contend that the charge is unreasonable. We agree. We are satisfied that the maximum that should be allowed for the service provided by Martin Heller is £200 (inc VAT). We reduce this by £300.

1.8. Managing Agents' Fees

129. The Applicants challenge the management fee charged by Eagerstates of £2,284.80. This is £380.80 per flat or £317.33 if VAT is excluded. In 2023, the FTT (at [27] – [29]) decided that a management fee of £267 (exc VAT) was reasonable and payable.
130. The Applicants do not challenge the size of the management fee. They rather argue that it should be reduced to reflect the quality of the service. The Building has been in a state of disrepair for a number of years. The Respondent has failed to put it into a property state of repair. When two tenants withheld service charges because of the poor state of the Building, the response of the Respondent was to threaten forfeiture. It seems that the Respondent has commissioned a number of unnecessary reports which have added to the service charge. We are also concerned that the Respondent has been unable to adduce any evidence to satisfy us that the Respondent has credited the reductions made by the FTT in 2023 to their service charge accounts. We remind ourselves of the evidence of Ms Chung that the tenants are now reluctant to complain about the disrepair because this merely results in botched repairs and higher service charges. This Building has not been well managed and we reduce the charge by 50%, namely £1,142.40.

Part 2: Common Part Service Charges (100% charged to tenants)

2.1 Electricity: £556.87

131. The Applicants challenge the charge of £556.87 for electricity. They contend that there are better rates available. The bills, from Pazitive Energy, are at p.205-221. They note that they have been charged twice for the bill dated 11 September 2023 in the sum of £63.52 (at p.214-215). This error was not spotted by the accountant when he audited the accounts.

132. In 2023, the FTT (at [30] – [31]) held that an annual charge of £550 was reasonable. We agree, however, a reduction of £63.52 must be made for the error in billing.

2.2 Cleaning of Common Parts: £1,467.84

133. The invoices from Doves Contract Cleaning Ltd are at p.223-234. The common parts are cleaned fortnightly at a rate of £50.05 + VAT. The Applicants challenge the sum of £1,467.84 for cleaning the common parts. In 2023, the FTT (at [32] – [33]) found that a charge of £1,411.84 was reasonable and payable. We agree.

134. However, the Applicants raised an additional argument. Their uncontradicted evidence is that the cleaners do not attend regularly. They suggest that they come once a month. The cleaners are required to sign an attendance sheet which is in the hallway. We were shown this on our inspection. Whilst there were occasions when visits were made fortnightly, there were a large number of occasions when no visit was recorded. We therefore accept the Applicant's evidence that regular visits are not made and reduce this charge by 50%, namely £733.92.

2.3 Fire Safety and Electrical Works: £6,840.47

135. The Applicants challenge the following items which appear in the service charge accounts:

(i) Fire Health & Safety testing, Services & Repairs: £1,998.00.

(ii) Visual Installation Condition Report: £303.67.

(iii) BNO Standard Audit: £1,488.00.

(iv) Multiple BNO repair Works: £1,327.48.

(v) Electrical Works: £516.00.

(vi) RCD Works: £825.24.

(vii) Re-attendance visit to confirm emergency point of isolation: £238.08

(viii) Supply & fitting of fire safety signage: £144.00

136. Fire Health & Safety testing, Services & Repairs: £1,998.00: The invoices are at p.235-240. This includes monthly testing by JBH Fire Services at £48 per month. There are additional charges of £200 (exc VAT) for a 6 monthly fire alarm service, £125 for AOV Service and Testing; £150 for fire door service and inspection and £100 for emergency light service, a total of £690, inc VAT (at p.239).

137. The Applicants contend that these charges are excessive. The operatives do not attend as regularly as they should. Mr White reminded us that the 2023 FTT (at [34]) had allowed a charge of £1,051.56. However, the Tribunal is satisfied that the sums charged for these services are excessive and reduce them by 50%, namely £999.
138. There are a number of charges which we consider together:
- (i) Visual Installation Condition Report: £303.67. There is an invoice from Propertyrun Contracts, dated 31 March 2023 at p.1078. The Condition Report conforming to BS7671 failed. There are photos at p.243-245.
 - (ii) BNO Standard Audit: £1,488.00. There is an invoice from BNO London, dated 25 April 2023, at p.1083. This was a report to carry out a standard audit.
 - (iii) Multiple BNO repair Works: £1,327.48. There is an invoice from BNO London, dated 25 April 2023 for £357.90 at p.1085, and a second invoice, dated 19 June 2023, for £969.58 at p.1094. There are photographs at p.1087-8 and 1096-7.
 - (iv) Electrical Works: £516. There is an invoice from Propertyrun Contracts, dated 10 May 2023 at p.1089-1091 with photos at p.1092-1093.
 - (v) RCD Works: £825.24. There is a further invoice from Propertyrun Contracts, dated 10 May 2023 at p.1091 with photos at p.1092-3.
 - (vi) Re-attendance visit to confirm emergency point of isolation: £238.08. There is an invoice from BNO London, dated 11 September, 2023 at p.1098.
139. The Applicants complain of an excessive number of bills for electrical works. They suggest that there has been an unnecessary amount of duplication and some items have been wrongly charged as emergencies. The Applicants have obtained a report from BS Electrical Services (UK) Ltd (at p.1072-3) which confirms this assessment. We agree and make a reduction of 25%. The bills total £4,698.47. We therefore make a reduction of £1,174.62.
140. Supply & fitting of fire safety signage: £144.00. There is an invoice from Superior Facilities Maintenance, dated 3 April 2023 at p.263. The invoice relates to “design, print, and hang up fire safety posters”. The Applicants question whether any signs were put up and contend that the cost is unreasonable. We accept that some signs were erected and saw these on our inspection. However, we are satisfied that the cost is unreasonable. As Mr Mason stated, these can be bought on-line for a modest sum. We reduce this by 50%, namely £72.

2.4 Miscellaneous Reports

141. The Applicants challenge the following items which appear in the service charge accounts:
- (i) Inventory Report: £108.00.
 - (ii) Surveyor to inspect various defects: £180.00.
142. Inventory Report: £108. There is an invoice from BML Security and Management Facilities, dated 8 February 2023, at p.241. The report is at p.1067-71. The Applicants question why this report was necessary. It is a basic report which should be prepared by the managing agent within their basic management fee. We agree and disallow this item.
143. Surveyor to inspect various defects: £180.00. There is an invoice from JMC Chartered Surveyors and Property Consultants, dated 20 June 2023, at p.258. In its Scott Schedule, the Respondent state “please refer to the report”. The Applicants state that they have not seen the report. Mr White was unable to identify this report. We therefore disallow this item.

The Other items in the 2023/24 Budget

144. The Tribunal has reduced the estimate for insurance in the budget to £3,860. The Applicants accepted that the other items in the budget are merely estimates. It is premature at this stage to consider the expenditure actually incurred or the quality of the services. The Applicants accepted this ruling.

Application under s.20C and refund of fees

145. At the end of the hearing, the Applicants made an application for a refund of the fees that he had paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
146. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is 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.

147. The Tribunal also makes any order pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 restricting the ability of the Respondent from charging an administration charge in respect of its litigation costs. However, the Tribunal does not consider that this is strictly necessary, as it would not seem to be open to the Respondent to levy such a charge.

Judge Robert Latham
14 October 2024

Rights of appeal

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

If a Party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

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

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

Appendix – Reduction in Service Charges

Building Service Charges – 50% charged to tenants	
Item	Reduction
1.1 Insurance	£2,156.48
2.2 Roof Works	The service charge for the major roofing works (£21,347.20) is capped at £250 per tenant.
1.3 External Repairs	£351 + £474: £825
1.4 Drainage Works	£285 + £1,620: £1,905
1.5 Fire Safety and Electrical Works	£408
1.6 Cleaning Windows and Gutters	£175
1.6 Accountant's Fees	£300
1.7 Managing Agent's Fees	£1,142.40.
Total:	£6,911.88 + the capping in 2.2
Common Parts Service Charges – 100% charged to tenants	
Item	Reduction
2.1 Electricity	£63.52
2.2 Cleaning of Common Parts	£733.92
2.3 Fire Safety and Electrical Works	£999 + £1,174.62 + £72: £2,245.62
2.4 Miscellaneous Reports	£108 + £180: £288
Total:	£3,331.06