



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

Case reference : **LON/00AM/LSC/2024/0087**

Property : **21 Beveden Street, London,
N1 6BH**

1st Application : **Payability and reasonableness of
service and administration charges**

Applicants : **Jerome Barneche (Flat 21A)
Mehran Gharleghi (Flat 21 B)
Andrea Kurland (Flat 1)
Giulia Grierson (Flat 2)
High Road Asset Management Inc
(Flat 3)
Arun Bir (Flat 5)**

Representative : **Diane Doliveux (Counsel)**

Respondent : **Assethold Ltd**

Representative : **Sam White (Counsel)**

2nd Application : **Determination of accrued,
uncommitted service charges**

Applicant : **21 Beveden RTM Company Limited**

Representative : **Diane Doliveux (Counsel)**

Respondent : **Assethold Ltd**

Representative : **Sam White (Counsel)**

Tribunal member(s) : **Judge Robert Latham
Alison Flynn MA MRICS**

**Date and Venue of
Hearing** : **4 September 2024 at
10 Alfred Place, WC1E 7LR**

Date of decision : **24 October 2024**

DECISION

Decisions of the Tribunal

Payability and reasonableness of service charges and administration charges

- (1) The Tribunal's determinations in respect of the service charges challenged in the Scott Schedule are set out at paragraph 21 below.

Accrued Uncommitted Service Charges

- (2) The Tribunal determines that the Respondent, as the relevant landlord, is obliged to pay accrued uncommitted service charges of £12,365.77 to the Applicants. The Respondent shall pay the said sum by 15 November 2024.

Tribunal Fees and Litigation Costs

- (3) 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.
- (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.

The Applications

1. The Tribunal is required to determine two applications which relate to 21 Bevenden Street, London, N1 6BH ("the Property"). The Property is a former public house which has been converted to create seven self-contained flats. On 15 October, 2021 Bevenden RTM Company Limited ("the RTM Company") acquired the statutory Right to Manage (RTM) pursuant to the provisions Part 2, Chapter 1 of the of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). Jerome Barneche, Mehran Gharleghi, Andrea Kurlan, Giulia Grierson, High Road Asset Management Inc, and Arun Bir ("the Applicants") are the tenants under long leases of six of the seven flats. The seventh flat is retained by their landlord, Assethold Ltd ("the Respondent"). Gregsons, Solicitors, have acted for both the Applicants and the RTM Company.
2. On 8 February 2024, the Applicants issued an application seeking a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable. The

Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of the 2002 Act. The application relates to the service charge years 2017/8 to 2022/3. The Applicants exercised their RTM because of the poor quality of the management of the Property and the level of service charges. Having commenced the statutory process for the RTM, the Applicants contend that the Respondent, through Eagerstates, its managing agent, increased the service charges that were demanded, threatening court proceedings and possession of their flats if they did not pay.

3. On 8 February 2024, the RTM Company issued an application for the payment of accrued uncommitted service charges pursuant to section 94(3) of the 2002 Act.
4. On 19 March 2024, the Tribunal gave Directions. The Tribunal directed that both applications should be heard together. The Tribunal made an order for the Respondent to disclose a number of documents so that the Applicants and the RTM Company could fully formulate their cases.
5. The Respondent failed to comply with this Direction for disclosure. On 25 June 2024, Judge Percival made an order barring the Respondent from taking further part in the proceedings under rule 9(3)(a) and rule 9(7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). The Order made provision for the Respondent to apply to be reinstated. The Respondent has failed to exercise this right.
6. Pursuant to the Directions, Gregsons have filed a Bundle of Documents extending to 633 pages. The core documents are:

Payability and reasonableness of service charges and administration charges

- (i) The Scott Schedule (at p.167-177)
- (ii) Statement of Case (p.153-157)
- (iii) Witness Statement of Giulia Grierson (p.158-166)

Accrued Uncommitted Service Charges

- (iv) Statement of Case (p.117-119)
- (v) Witness Statement of Mehran Gharleghi (p.158-166)

The Hearing

7. Ms Diane Doliveux (Counsel) appeared for the Applicant, instructed by Gregsons, Solicitors. Ms Mehran Gharleghi and Ms Giulia Grierson

attended the hearing. Both Ms Gharleghi and Mr Gharleghi have made witness statements and gave evidence.

8. Mr Sam White (Counsel) appeared for the Respondent. He had been instructed at a late stage and we are grateful for the assistance that he provided. Ms Doliveux applied to amend their claim for accrued uncommitted service charges as set out in their letter, dated 15 August 2024 (at p.148). Mr White did not oppose this application. We granted the application.
9. On 15 June 2024, Judge Percival had debarred the Respondent from taking any further part in these proceedings. The Tribunal permitted him to make submission on the law.
10. The claim for accrued uncommitted service charges was not opposed. The Tribunal then worked through the Scott Schedule. The Respondent has no pleaded case in response. It was therefore necessary for the Applicants to establish a prima facie case that the alleged items were either not payable pursuant to the terms of their leases or were unreasonable in either quality or expense. On most items, Mr White was unable to say little more than that the Applicants had not come up to proof, or that it was a matter of evidence for the Tribunal.

Part 1 – The Service Charges

The Leases

11. The Tribunal was referred to the lease for Flat 3 which is at p.70-90. The lease is dated 15 September 2010 and is for a term of 125 years from 15 September 2010. Ms Doliveux referred the Tribunal to the following terms of the lease:
 - (i) By clause 1, the windows are demised to the Lessee and by Clause 3(3) the Lessee covenants to repair and maintain them;
 - (ii) By Clause 4.2.1 and 4.2.2, the Lessee covenants to pay a maintenance charge, which is to be a fair proportion to be determined by the Lessor;
 - (iii) By Clause 4.2.6, the service charge is to be certified by the Lessor, its managing agent or surveyor. There is no requirement for the expenditure to be certified by an accountant.
 - (iv) The Lessor's covenants are in Clause 5.

The Law

12. 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.”

13. 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.”

14. 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]).

15. 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

The Background

16. The Property is a former public house which has been converted to create seven self-contained flats. There are seven flats. Six long leases were granted between 2008 and 2011. The Respondent retains possession of Flat 4 which is a one bedroom flat on the second floor. Each flat contributes 1/7 to the service charge expenses.
17. The Applicants occupy the following flats:
- (i) Mr Jerome Barneche is the lessee of Flat 21A which is a two bedroom flat on the upper and lower ground floors. His lease is dated 7 January 2011. He is the original lessee. He does not occupy his flat.
 - (ii) Mr Mehran Gharleghi is the lessee of Flat 21B which is a two bedroom flat on the upper and lower ground floors. His lease is dated 27 January 2011. He is the original tenant. He does not occupy her flat.
 - (iii) Mr Andrea Kurland is the lessee of Flat 1 which is a one bedroom flat on the first floor. His lease is dated 29 September 2008. He is the original lessee. He does not occupy his flat.
 - (iv) Ms Giulia Grierson is the lessee of Flat 2 which is a one bedroom flat on the first floor. Her lease is dated 8 April 2010. On 24 October 2022, Ms Grierson acquired the lease. She occupies her flat.
 - (v) High Road Asset Management Inc is the lessee of Flat 3. This is a one bedroom flat on the second floor. The lease is dated 15 September 2010. On 7 November 2013, it was registered as the lessee.
 - (vi) Mr Arun Bir is the lessee of Flat 5. This is a three bedroom flat on the third floor. His lease is dated 13 July 2010. On 24 January 2022, Mr Bir was registered as the lessee. He occupies his flat.
18. On 11 July 2011, the Respondent acquired the freehold interest. The Property has been managed by Eagerstates Ltd (“Eagerstates”), a company closely linked to the Respondent. The Applicants complain of the level of the level of the service charges and the quality of the services since the Respondent acquired the Property. This led them to apply for the statutory RTM. The Applicants complain of the extent to which their service charges have increased after they notified the Respondent that they served their Claim Notice in respect of the RTM.

19. The relevant accounts, budgets and the handover accounts are at p.91-104. Mr White informed the Tribunal that the service charge year runs from 1 December to 30 November.

| Year | Budget | Actual Expenditure |
|------------------|------------|--------------------|
| 2016/17 | | |
| 2017/18 | £11,301.15 | £17,913.67 |
| 2018/19 | £11,947.68 | £11,449.02 |
| 2019/20 | £12,649.25 | £13,387.38 |
| 2020/21 | £12,036.05 | £27,674.92 |
| 2021/22 | £16,000.70 | £28,632.85 |
| 1.12.22-14.10.23 | £18,074.06 | £33,898.17 |

20. On 15 October, 2021 Bevenden RTM Company Limited (“the RTM Company”) acquired the RTM. The property is now managed by Haus Block Management (“Haus”). The Applicants rely on their budget for 2023/24 (at p.633) as evidence of the reasonable cost of managing the Property. This totals £7,051.38. However, some of these items are only for the period 31 October 2023 to 31 March 2024 (five months). The most significant item is insurance (£5,037) which would be for the full year.

The Scott Schedule

21. The Applicant’s have provided a detailed Scott Schedule. They challenge a large number of items in the service charge accounts. The Respondent has not responded to this. We therefore set out the challenges raised in the Scott Schedule and our determination as to whether the Applicants have established a prima facie case that the items are not payable or are not reasonable having regard to the cost or quality of the service. Any Applicant will only be able to reclaim the service charges which they paid whilst lessee of the relevant flat.

| Applicants’ Scott Schedule | | |
|-----------------------------------|-------------|--|
| Item | Cost | Tenants’ Comments |
| 1. Common Parts Cleaning | | |
| 2017/2018 | £4,023.84 | Excessive cost for the service provided. Cleaning spec not adhered to. One cleaner took about an hour each week to do some vacuuming. No attendance at all during lockdowns in 2020 and 2021 totalling 7 months (£292.43, £292.43, £299.03, £299.03, £298.43, £305.03 and £298.43 total |
| 2018/2019 | £3,698.97 | |
| 2019/2020 | £3,535.56 | |
| 2020/2021 | £3,662.95 | |
| 2021/2022 | £3,792.00 | |
| 2022/2023 | £4,309.40 | |

| | | |
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| | | £2,084.81). Costs charged post RTM October invoice and November invoice. 50% £327.20 and £156 not payable. Since RTM in October 2023 the same cleaning spec is undertaken at an annual cost of £2,200 for twice weekly cleaning. |
| <p><u>Tribunal's Determination:</u></p> <p>In her oral argument, Ms Doliveux argued that the service charges were too high, the quality was inadequate, and that the tenants were charged for a service which was not provided during Covid-19. The service is now being provided at an annual cost of £2,200. We agree that the cost is too high and cap this at £2,200 for each of the years 2017/18 to 2021/22 and at £1,925 for 2022/23 as the service was only provided for 10.5 months.</p> | | |
| <p>2. Carpet cleaning</p> | | |
| 2022/2023 | £156 | The invoice is for a clean which has been charged post RTM. The Applicants do not believe the carpets were cleaned after they took over management but even if they were, the cost is not chargeable post RTM. |
| <p><u>Tribunal's Determination:</u></p> <p>The receipt, dated 1 December 2023, is at p.210. It purports to be for a service provided in November 2023. This is after the RTM Company assumed responsibility for the management of the Property. Mr White conceded this item. The Tribunal disallows it.</p> | | |
| <p>3. Window Cleaning</p> | | |
| 2018/2019 | £654.00 | The windows are demised to lessees so are not a part of the building which is to be cleaned by the Respondent and charged to service charges under the lease. There was no window cleaning at all in 2023. None of these costs are payable as relevant costs. Further, the costs are not reasonable. The |
| | £891.00 | |
| 2019/2020 | £553.40 | |
| 2020/2021 | £540.00 | |
| 2021/2022 | £846.00 | |

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| 2022/2023 | | RTM Company now pays £500 for four cleans a year and they are actually done and done properly. |
| <p><u>Tribunal's Determination:</u></p> <p>Mr White conceded that the cleaning of the windows is the responsibility of the tenants. The Tribunal disallows these charges.</p> | | |
| 4. Gutter maintenance | | |
| 2022/2023 | £756.00 | There is no invoice to support this charge which appears in the handover accounts. The Applicants were informed by email that gutter cleaning was to take place on 17 August 2023 but it didn't. The gutters were not cleaned either on that date or on any other date and the lack of the invoice would support that. |
| <p><u>Tribunal's Determination:</u></p> <p>There is a photo of the gutters at p.335. We were told that access through Flat 5 would be required. No invoice has been produced. Mr White submitted that this was a matter of evidence for the Tribunal. We are not satisfied that this work was done. We disallow this item.</p> | | |
| 5. Bin Cleaning | | |
| 2020/2021 2021/2022 | £74.40 £215.76 | There were no charges for bin cleaning in any other year but 2021 and 2022 (August 21 to July 22) the Applicants were charged for bin cleaning eight times. The bin area is to be cleaned as part of the cleaning spec. and no Applicant has any recollection of the bins ever being cleaned on any occasion. |
| <p><u>Tribunal's Determination:</u></p> <p>There is an invoice, dated 8 November 2021 at p.273 in the sum of £37.20 and one, dated 14 August 2022, at p.287 for £33.48. Mr White submitted that this service was not part of the cleaning service. The Tribunal allows the charges in respect of which the two invoices are provided (£70.68). The Tribunal is not satisfied that the other services were provided and disallow these.</p> | | |
| 6. Rubbish disposal | | |

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| | | |
| 2017/2018 2018/2019 2021/2022 | £84.00 £60.00 £432.00 | The Applicants can think of no reason why there was any requirement for rubbish removal in the earlier years and there was certainly none in 2022. There are three Bee Green invoices dated January, February and April 2022. Each is described as “wait and load”. Two are for £108 and the other is for £216. The photos with the first invoice show some bits of cardboard next to the bins. There is no evidence of any need for rubbish disposal over and above that provided by the local authority. |

Tribunal’s Determination:

There are invoices dated 23 November 2018, for £84 (at p.289 and photos at p.290-292)) and 7 June 2019 for £60 (at p.293, with photos at 297) and 8 December 2021 for £108 (at p.298 with a photo at p.299). Mr White submitted that it was clear that this work was carried out. We are satisfied that this service was provided. Albeit that not all invoices are provided, we are satisfied that this charge is payable in full.

7. Insurance revaluation

| | | |
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| 2022/23 | £2,700.00 | The building was valued for insurance purposes by JMC in 2020 at a cost of £613.80. It was re-valued in May 2023 at a cost of £2,700 also by JMC. The first valuation was undertaken by a qualified surveyor. The second was not. It is unclear as to why an inspection was thought necessary but even if justified that should have added no more than two hours to the time required. The Applicants propose that a fee of £750 plus VAT would be reasonable in place of the self-evidently excessive fee charged. |
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Tribunal’s Determination:

The invoice, dated 10 June 2020, in the sum of £613.80 for the first revaluation is at p.302. The report is at p.303-310. Mr Kraus BSc (JMC) advised that the Property should be insured for £2.6m.

The invoice, dated 31 May 2023, for £2,700 is at p.311. The report is at p.326-336. Daniel Proctor BSc (JMC) advised that the Property should be insured for

£2.9m.

The Tribunal is satisfied that the Respondent was entitled to obtain the second valuation report. However, the Tribunal agrees that the cost of the second report is excessive. We agree that a sum of £750 + VAT (£900) would be reasonable. We therefore reduce the charge of £2,700 by £1,800.

8. Insurance premiums

| | | |
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| 2017/2018 | £1,980.84 | The Respondent did not disclose their portfolio discount, their commissions or the claims history when ordered, so making it impossible for the Applicants to obtain alternative quotes for insurance. A discount of 20% across the board should be applied to take these factors into account. |
| 2018/2019 | £2,077.38 | |
| 2019/2020 | £4,343.52 | |
| 2020/2021 | £5,049.58 | |
| 2021/2022 | £4,227.84 | |
| 2022/2023 | | |

Tribunal's Determination:

The Tribunal notes that Haus have included £5,037 for insurance in the RTM Company budget for 2023/24. Applying our knowledge as an expert tribunal, we are satisfied that the sums charged are reasonable. We allow these charges in full.

9. Additional Insurance

| | | |
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| 2020/23 | £595.06 | The insurance re-valuation in May 2023 advised that the building be insured for £2.9m. It was at that time insured for £2,848,297 so any top up should have been minimal, if any. The Respondent chose to over insure to £3.9m for the period 6 June to 30 September 2023 which increased the premium by £595.06. It is not reasonable for the Applicants to be required to pay the increased premium for the building to be overinsured by £1m. |
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Tribunal's Determination:

The Aviva Insurance Policy Schedule, dated 26 September 2022, is at p.320-2. The declared value was £2.1m, and the sum insured was £2.848m. The premium was £4,999.58. The Aviva Insurance Policy Schedule, dated 26 June 2023, is at p.323-5. The declared value is £2.9m, but the sum insured was

increased to £3.915m. This later figure reflects the additional costs that would be incurred were the Property to be rebuilt after a fire. The premium was increased to £5,594.63.

This sum of £595.06 is included in the handover accounts (at p.103).

The Tribunal is satisfied that this sum is reasonable and payable.

10. PM Schedule

| | | |
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| 2020/2021 | £1,170.00 | A competent professional managing agent should deal with this as part of their management fee; JMC are based in Manchester and Mr Carroll is not a surveyor. The Schedule is principally a statement of the obvious and it is not reasonable to incur this cost. |
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Tribunal's Determination:

The invoice for this report, dated 25 February 2021, is at p.348. The report, prepared by JMC, is at p.337-347. Mr White submitted that this was an additional service outside the standard management agreement. It is a competent report. We agree and allow this charge.

11. EWS1 costs

| | | |
|-----------|-------------------------------|---|
| 2019/2020 | £720.00 £180.00 | The invoices are from JMC and describe "multiple surveyor visits for external cladding & EWS1 form" £990. Firstly, the invoices add up to £900 so an overcharge of £90. |
| 2020/2021 | £207.00 £180.00 £180.00 | The invoices themselves are vague and repetitive. JMC were not qualified to give an EWS1 certificate or carry out the External Wall Review so the Applicants fail to see what advice they could have given for it to be reasonable for the Applicants to pay the cost. The Respondent was ordered to disclose reports but there were none on this subject from JMC. £3,840.00 dated 28 Feb 2021 £2,880.00 dated 26 May 2021 |

| | | |
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| | | <p>These costs were for the External Wall Review and for the EWS1. They concluded the building was low risk and had a B1 classification. The Applicants do not object to these costs as those who provided this service were clearly qualified to do so and should have been instructed at the outset to do their work.</p> |
| <p><u>Tribunal's Determination:</u></p> <p><u>2019/20: £990 (p.97)</u></p> <p>There are two invoices from JMC, dated 31 July 2020 in the sum of £720 (at p.349) and 31 August 2020, in the sum of £180 at p.350. These total £900, rather than the figure of £990 which was included in the service charge accounts . 8 hours work are charged at £150ph. This work related to the provision of an EWS1 Form which the tenants would require given the external cladding. No written report has been disclosed. We are satisfied that this charge is reasonable, but reduce the service charge from £990 to £900 as there was an arithmetical error which was conceded by Mr White.</p> <p><u>2020/21: £567 (p.99)</u></p> <p>There are two further invoices from JMC, dated 31 January 2021, in the sum of £207 (at p.351) and 23 March 2021 for £180 (at p.352). These also relate to the provision of the EWS Form. No reports or letters from JMC have been disclosed. We note that there are two additional report from Trident for £3,840 (p.353) and Part B Group Ltd for £2,880 (at p.381) which the Applicants do not dispute. We are not satisfied that the sums of £567 charged by JMC have been properly incurred. We disallow them.</p> | | |
| <p>12. Plumbing</p> | | |
| | <p>£306.00</p> | <p>This work related to the boiler in flat 5, demised premises. It is not therefore a service charge cost.</p> |
| <p><u>Tribunal's Determination:</u></p> <p>The invoice from Gas Weiss, dated 29 October 2019, for £306 is at p.382. Mr White submitted that there was a problem of noisy pipes within the Property which needed to be investigated as a communal problem. The fact that the cause of the problem was traced to Flat 5 is irrelevant. We agree and allow this charge.</p> | | |
| <p>13. Common parts decoration</p> | | |

| | | |
|-----------|---|---|
| 2017/2018 | £7,080.00 (inc management fee of £1,080) | The cost is excessive. Very similar works were charged by the same company in 2023 for £1,140. The extent of the earlier works was a little greater but not significantly so. The Applicants propose a cost of £1,750 including any management fee. |
| 2022/2023 | £1,140.00 | No decoration of the common parts was undertaken in March/April 2022, so no cost is chargeable. |

Tribunal's Determination:

2017/18: £7,080 (p.93)

There is an invoice from Entremark Building Services, dated 16 April 2018, in the sum of £5,000 + VAT (£6,000) at p.384. There are photos at p.385-395. Eagerstates have charged £900 + VAT (£1,080) for "admin fee for section 20 for internal decorating". These works would have required the statutory consultation notices. Mr White submitted that in 2018, a full programme of decorations was carried out, whilst in 2023 more limited works were executed. We are satisfied that the sum charged by Entremark was reasonable, and that the Eagerstates charge is also reasonable given the statutory notices that needed to be served.

2022/23: £1,140 (p.103)

There is an invoice from Entremark, dated 13 April 2022, in the sum of £950 + VAT (£1,140) at p.384. There are photos of the work at p.394-395. We are satisfied that the charges are reasonable for the works that were executed.

14. Wall and ceiling repair

| | | |
|-----------|-----------|--|
| 2021/2022 | £1,200.00 | No work was undertaken. The photos with the invoice are of the electrical cupboard and on inspection there is no sign of any repairs to a wall or the ceiling. |
|-----------|-----------|--|

Tribunal's Determination:

There is an invoice from Superior Facilities Maintenance, dated 1 November 2022, for £1,200 at p.396. There are photos at p.397-9, but these do not seem to relate to the works which were executed. The Applicants have not established a prima facie case that the work was not executed. We allow this charge.

| | | |
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| 15. Electrical works and inspections | | |
| 2021/2022 | £300.60 £1,164.00 | <p>Minor works were carried out by Propertyrun on 18 May 2022 which included EICR, which failed. They attended again five days later on 23 May 2022. A pass certificate was provided.</p> |
| 2022/2023 | £2,957.82 £1,575.60 | <p>Some months later on 6 January 2023 a standard audit was carried out at a cost of £1,740. The building had passed only months previously so this inspection and cost cannot have been reasonably incurred. Works were then recommended at a cost of £989.82 which in part duplicated the works charged by Propertyrun. It also included works to the Ryefield Board which the audit said was satisfactory.</p> <p>Then in April 2023 Propertyrun carried out a Visual Inspection Condition Report at a cost of £298.80.</p> <p>Then in May 2023 Propertyrun charged £898.80 for yet more works and also in May 2023 the Applicants were charged £378 by Propertyrun for a new LED maintained emergency pack which they had already been charged for in the 23 May 2022 invoice.</p> <p>The Applicants do not believe that these costs have been reasonably incurred. There were no issues with the electrics.</p> |
| <p><u>Tribunal's Determination:</u></p> <p><u>2021/22: £300.60 + £1,164.00 (p.101)</u></p> <p>There is an invoice from Propertyrun Contracts, dated 18 May 2022, for £300.60 (at p.400-401). This relates to an electrical inspection as a result of which some repairs were executed. There are photos at p.402-403. There is a report, dated 20 May 2022, at p.404-414.</p> <p>There is a second invoice from Propertyrun, dated 23 May 2022, for £1,164.00 at p.416-417. This relates to the installation of a fire related mastic to the intercom transformer due to the exposed basic insulation not conforming to BS7671. A broken PIR sensor was also replaced.</p> | | |

The Tribunal accepts that these were for separate items of work. The sums were reasonably incurred and are payable.

2022/23: £2,957.80 + £1,575.60: £4,533.42 (p.103)

There are a number of invoices:

(i) BNO London, dated 6 January 2023 in the sum of £228 (at p.433) with photos at p.435-6; (ii) BNO London, dated 9 January 2023 in the sum of £1,740 (at p.430 with associated documentation at p.417-429); (iii) BNO London, dated 10 February 2023 in the sum of £989.82 (at p.446 with a photo at p.447); (iv) Propertyrun, dated 28 April 2023, in the sum of £298.80 (at p.448 with associated documents at p.449-455); (v) Propertyrun, dated 23 May 2023, in the sum of £898.00 (at p.457); and (vi) Propertyrun, dated 23 May 2023, in the sum of £378.00 (at p.458).

The Applicants suggest that there were no problems with the electrics and that this work was not required.

The invoices record the work that was executed and this is confirmed by the photographs and associated documentation which has been disclosed. We are satisfied that this work was executed and that the sums charged are reasonable.

16. Actuator service and repair

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| 2021/2022 | £150.00 £162.00 | The AOV was serviced and certified by ESP on 14 February 2022 at a cost of £125 plus VAT but the Applicants were then charged for a repair on 21 March 2022 at a cost of £162. Either the work was not necessary or the AOV needed to be repaired when certified the month previously. The Applicants do not believe it is reasonable for them to be charged for both costs. |
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Tribunal's Determination:

On 14 February 2022 (at p.464), Essential Safety Products ("ESP") carried out the annual AOV service at a cost of £150. On 21 March 2022 (at p.468), ADL Fire and Security carried out an "AOV actuator repair" at a cost of £162. The works were: "fixed the aov motor, took out the closing, case, had to set up the screws, the screws had been damaged and the aov was not secured properly" (see p.465). Ms Doliveux argued that this second invoice is not justified as either the work was not required or the work carried out in February was inadequate. The Applicants have not established a prima facie case either that the works in February were inadequate, or that the work in March was not required. We allow these charges.

| 17. Moss and vegetation clearance | | |
|---|-----------------------------------|---|
| 2020/2021 | £720.00 | There was no moss or vegetation on the very small entrance area and decking. At most, the entrance tiles benefitted from a scrub. The Applicants would expect the tiles around the front door to be part of the cleaning spec which includes mopping of common parts. |
| <p><u>Tribunal's Determination:</u></p> <p>On 11 July 2021 (at p.469), BML submitted an invoice for £720 to remove any moss or vegetation from the tiled entrances and decking. The operative checked the necessary areas for any trip hazards. There are photos of this area at p.470-1. The decking is in the basement area. The real problem in this area appears to be some rot to the decking. The Applicants contend that no work was executed as assess would have been required from the occupants and no access was sought. Mr White submitted that this was a matter of evidence. We are not satisfied that this work was done and we disallow this item.</p> | | |
| 18. Fire Doors | | |
| 2019/2020 | £435.60 | Pink foam to electric cupboard (see below). |
| 2020/2021 | £744.00 | It is unclear what the emergency was. A door sticking is not an emergency. No requirement for two visits or any specialist to attend. The Applicants believe that this is an unreasonable cost and there was duplication from two visits. |
| 2021/2022 | £3,180.00 £572.40 (man fee) | S20 works on 15 October 2021 installing two new electric cupboard doors and one adjustment to electric cupboard door including management fee. This work was found to be faulty when inspected three months later. |
| | £282.60 £196.99 | The door inspection report dated 13 January 2022 found that all three electric cupboard doors and one gas cupboard door had faults. |
| | £126.72 | This was followed by an EFP Inspection on 31 March 2022 on the same doors inspected on 13 January 2022. There can be no possible justification for repeat |

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| | | inspections of the same doors. |
| | £126.72 | Yet another EFP Inspection carried out on same doors on 28 October 2022. |
| | £1,200.00 | Superior Facilities Management were engaged to remove pink foam on 2 November 2022. The leaseholders had previously been charged £435.60 for installing the same pink foam in March 2020. |
| | £180.00 | The invoice dated 1 November 2023 is post RTM. |
| | | The Applicants submit that the repeat inspections are unreasonable, and the works undertaken pursuant to the section 20 consultation were found to be faulty. |
| | | They seek reductions to reflect these matters. |

Tribunal's Determination:

This challenge relates to nine invoices over two years which total £7,044.94: (i) Invoice dated 2 March 2020 from MM Building Agency in the sum of £435.60 (at p.472 with photos at p.473-4); (ii) Invoice dated 2 October 2021 from BML in the sum of £744 (at p.475); (iii) Invoice dated 15 October 2021 from Entremark in the sum of £3,180 (at p.489), together with a further invoice, dated 18 October 2021 from Eagerstates in the sum of £572.40 for an “admin fee for section 20 for door works” (at p.493); (iv) Invoice dated 13 January 2022 from Security Masters Ltd in the sum of £282.60 (at p.494 with report at p.495-499); (v) Invoice dated 3 February from January 2022 Security Masters Ltd in the sum of £196.99 (at p.518 with report at p.519-523); (vi) Invoice dated 31 March 2022 from EFP in the sum of £126.72 (at p.530); (vii) Invoice dated 28 October 2022 from EFP in the sum of £126.72 (at p.533); (viii) An invoice dated 2 November 2022 from Superior Facilities Maintenance in the sum of £1,200 (p.537-8); and (ix) Invoice dated 2 November 2022 from JHB Fire Services in the sum of £180 (p.542).

Mr White accepted that the final invoice for £180 postdated the date upon which the RTM Company took over the management of Property. It must therefore be disallowed.

The remaining invoices total £6,864.94. Ms Doliveux argued that the Applicants were being charged over and over against for the same or similar works. She also questioned the size of the fees and the quality of works. Mr White submitted that this was a matter of evidence for the Tribunal. We agree with the Applicants and reduce the charges by 50% (£3,432.47).

The total reductions that we make are £3,612.47.

19. Fire Safety Grills and Intumescent vents

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| | | There were five invoices in the space of one week which appear to be quotes or estimates, not invoices. |
| | £300.00 | Intumescent foam removed (see below). |
| 2019/2020 | £200.00 £800.00 | A total of £1,000 was charged for replacement of five metal vents. |
| 2021/2022 | £850.00 | £850 was charged to remove intumescent foam. The leaseholders had already been charged £300 to remove intumescent foam from by invoice dated 7 May 2020. |
| | £275.00 £150.00 | There are invoices which do not seem to provide any services, for example there is one for £150 which reads <i>“Inform all tenants that communal areas should not be used for storage.”</i> Another for £275 reads <i>“Remove combustible items and either store in a designated storage area or dispose of in a correct manner.”</i> |
| | | The Applicants submit that it is not reasonable for them to pay these costs |

Tribunal’s Determination:

This challenge relates to the following charges:

(i) Invoice dated 7 May 2020 from Entremark in the sum of £300 (p.543 with photos at p.544-7); (ii) Invoice dated 10 March 2022 from Management 2 Management in the sum of £200 (p.548 with photos at p.549-553); (iii) Invoice dated 10 March 2022 from Management 2 Management in the sum of £800 (p.555); (iv) Invoice dated 10 March 2022 from Management 2 Management in the sum of £275 (p.556); (v) Invoice dated 10 March 2022 from Management 2 Management in the sum of £150 (p.554); and (vi) Invoice dated 16 March 2022 from Management 2 Management in the sum of £850 (p.557 with photo at p.558).

These 6 invoices total £2,575. Ms Doliveux again argued that the Applicants were being charged for the same or similar works. She also questioned the size of the fees and the quality of works. Mr White submitted that this was a matter of evidence for the Tribunal. He contended that there was no repetition.

Again, we agree with the Applicants and reduce the charges by 50% (£1,287.50).

20. Fire Risk Assessments

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| <p>2021/2022</p> | <p>£400.20 £654.00</p> | <p>The Respondent retained two different companies to conduct two Fire Risk Assessments within the space of three months. One in November 2021 and the second in February 2022. Government guidance requires a FRA once a year if the building is high risk.</p> <p>The FRA’s findings were not conveyed to the leaseholders.</p> <p>The cost of £400.20 is supported by an invoice from LFP for a Fire Risk and Health and Safety Assessment. It is dated 9 December 2021.</p> <p>The figure of £654 is made up of two invoices one for £432 and the other for £222. The former is for a FRA by 4site and is dated 18 February 2022 and the latter is for “Health, Safety and Fire Advice” also from 4site and is dated 16 September 2022.</p> <p>No fire risk assessment has been disclosed as part of the Respondent’s disclosure for the invoice raised by 4site dated 18 February 2022 for £432 for their FRA and the one page letter which gave rise to the second invoice dated 16 September 2022 comprised of a commentary on the External Wall Review and the EWS1 findings both of which had been obtained by May 2021, long before any of these FRAs</p> |
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Tribunal’s Determination:

This challenge relates to two invoices: (i) Invoice dated 9 December 2021 from London Fire Prevention in the sum of £400.20 for a fire risk and H&S assessment (p.596); and (ii) two invoices from 4site Consulting Limited dated 18 February 2022 I the sum of £432 for “heal and safety & fire risk assessment” (p.597) and 16 September 2022 for £222.00 for “fire, safety and fire advice” (p.600).

The Tribunal agrees that there is no justification for two sets of reports. The Tribunal allows £400.20 for the first report, and disallows the sum of £654 for the subsequent reports.

21. Signage

| | | |
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| 2021/2022 | £100.00 | The Applicants were charged for bin signs, but there were and are none. |
| 2022/2023 | £144.00 | This charge relates to a laminated health and safety sign which can be obtained from Amazon for as little as £10. The Applicants submit the charge is excessive. |

Tribunal’s Determination:

This challenge relates to two charges: (i) Invoice dated 2 March 2022 in the sum of £100 to supply and fit signage to the bin store (p.619); and (ii) Invoice dated 3 April 2023 from Superior Facilities Maintenance in the sum of £144 for “design, print and hang up fire safety posters.

The Tribunal agrees that the sums charged are excessive and allows £50, a reduction of £194.

22. Miscellaneous

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| 2020/2021 | £150.00 | The service charge accounts include a charge of £150.00 for ‘door numbering’ in 2020/2021 and £150.00 for ‘report about storage area’ in 2021/2022. |
| 2021/2022 | £150.00 | |
| There are no invoices to support these charges. | | |

Tribunal’s Determination:

In the absence of any invoices or other documentation in respect of these charges, we disallow these two items.

23. Accountants’ fees

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| 2017/2018 | £480.00 | <p>Accounts are no more than a list of expenses which give every appearance of having been prepared by Eagerstates who then certified them. No sign of independent scrutiny by accountants.</p> <p>Service charge accounts are not supported by the invoices disclosed.</p> <p>It is also unclear what period the accounts cover.</p> <p>The accounts do not comply with TECH 03/11 and RICS Code.</p> <p>No invoice has been disclosed for £630 charged in the handover accounts.</p> |
| 2018/2019 | £510.00 | |
| 2019/2020 | £540.00 | |
| 2020/2021 | £570.00 | |
| 2021/2022 | £600.00 | |
| | £630.00 | |
| 2022/2023 | | |

Tribunal's Determination:

The invoices from Martin Heller are at p.621-625. The lease does not require the service charge expenditure to be authorised by an accountant. Martin Heller share the same address as Eagerstates. The service charge accounts are at p.91-102. These are no more than a list of expenses. We disallow these five charges with total £2,700.

The final charge of £630 relates the preparation of the handover charges. These are at p.103-104. Again, these are no more than a list of expenses prepared by Eagerstates. No invoice has been provided. We reduce this by £530 and allow £100.

24. Management fees

| | | |
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| 2017/2018 | £2,024.40 | <p>Excessive cost for exceptionally poor service, undisclosed commissions and refusal to consult or to accept alternative quotes for works, <i>ad hoc</i> demands which did not comply with lease terms and piling up of additional service charges after the RTM process had started. Much duplication of pointless inspections and works.</p> <p>The close relationship between the Respondent and its managing agent requires particular scrutiny. They are owned and run by the same family.</p> |
| 2018/2019 | £2,032.80 | |
| 2019/2020 | £2,058.00 | |
| 2020/2021 | £2,074.80 | |
| 2021/2022 | £2,100.00 | |
| 2022/2023 | £2,142.00 | |
| | | |

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| | | Eagerstates are not professional independent managing agents and there was no tender process prior to their appointment or since. Their management contract has not been disclosed. |
| <p><u>Tribunal's Determination:</u></p> <p>The management fee is not unreasonable. In 2023/24, the charge was £306 per flat (inc VAT). We note that Haus are now charging the tenants £3,600 pa. However, the tenants have not received the standard of service to which they are entitled. We therefore reduce the fees by 50%. The total claimed is £12,432. We allow £6,216.</p> | | |

Part 2 – The Accrued Uncommitted Service Charges

The Law

22. Section 94 of the Commonhold and Leasehold Reform Act 2002 provides:

(1) Where the right to manage premises is to be acquired by a RTM company, a person who is:

- (a) landlord under a lease of the whole or any part of the premises,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2) The amount of any accrued uncommitted service charges is the aggregate of:

- (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
- (b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to the appropriate tribunal to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

23. Section 42 of the Landlord and Tenant Act 1987 imposes a statutory trust on a landlord in respect of service charges paid by a tenant. This imposes the general duties of a trustee on the landlord in respect of any service charges which have been paid. Any tenant has the general remedies of misappropriation where a landlord is in breach of its fiduciary duties.

The Tribunal's Determination

24. The handover accounts which the Respondent sent to the Applicants on about 1 November 2023, showed that the balance owed by the Respondent to the RTM Company was £7,790.51. However, the figures for Flat 2, did not reflect the sum of £4,575.26 which Ms Grierson had paid to the Respondent on 24 July 2024 of £4,575.26. Evidence of this payment was provided at p.149. We are therefore satisfied that the correct sum is £12,365.77.

Tribunal Fees and Litigation Costs

25. The Applicants have paid Tribunal fees of £300. The Tribunal orders the Respondent to refund the fees paid by the Applicants within 28 days of the date of this decision pursuant to Rule 13(2) of the Tribunal Rules.
26. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Since 15 October 2023, the RTM Company has been managing the Property. In so far as it may be relevant, having heard 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.

27. 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
24 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).