In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case Reference	**:**	**LON/00BJ/LSC/2024/0224**
Property	**:**	**Flats 1,2,3,4,5 and 6, 15-17 West Hill, London SW18 1RB**
Applicants	**:**	**Helena Ann Jeanie Piper (Flat 5)** **Nicola Alison Percy and Lance Grobbelaar (Flat 2)** **Julian Briggs Cookson (Flats 3 & 4)** **Lauren Victoria Grimmer (Flat 6)** **David William Cooper (Flat 1)**
Respondent	**:**	**Assethold Ltd**
Representative	**:**	**Eagerstates Ltd**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mr K Ridgeway MRICS**
Date and venue of Hearing	**:**	**4th October 2024** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**4th October 2024**

DECISION

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(1) The service charges challenged in this matter and listed in the decision below are not reasonable nor payable in full by the Applicants to the Respondent, save as follows:

(a) The buildings insurance for each of the two years 2022/23 and 2023/24 is limited to £1,615.58;

(b) The cost of the "Installation of consumer unit blanks" is limited to a total of £250;

(c) The cost of "Various FHS remedial works" is limited to a total of £1,500 (£250 per flat);

(d) The cost of standard and advanced audits to "risers" is limited to a total of £750;

(e) The cost of works to internal and external "risers" is limited to a total of £1,500 (£250 per flat);

(f) The cost of "Removal and disposal of rubbish in riser cupboards" is limited to £72;

(g) Management fees and cleaning services for 2023/24 are limited to £1,425.60 and £1,139.10 respectively.

(2) The Respondent shall reimburse the Applicants their Tribunal fees totalling £360.

(3) Further, the Tribunal grants orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any of their costs of these proceedings through the service charge or by charge to any individual Applicants.

(4) Either party may apply to the Tribunal for further directions in these proceedings in the event that the parties cannot agree the calculation of the revised service charges in the light of this decision.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicants are the lessees of the 6 flats at the subject property, which they have been managing since 30th December 2023 through a right to manage company. The Respondent is the freeholder and their agents, who managed the property until the right to manage took effect, are Eagerstates Ltd.

2. The Applicants applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness and payability of certain service and administration charges. The Tribunal issued directions on 26th June 2024.

3. The Tribunal heard the case on 4th October 2024. The attendees were:

   - Three of the Applicants: Ms Piper, Ms Percy and Ms Grimmer; and
   - Mr Mark Erridge, counsel for the Respondent.

4. The documents before the Tribunal consisted of a bundle of 107 pages and a skeleton argument, both from the Applicants.

Procedural Issues

5. The directions required the Respondent to produce their case and the documents in support by 28th August 2024. To date, they have not done so.

6. Eagerstates, as is common practice when the Respondent is a party before this Tribunal, appears to have run the litigation on the Respondent's behalf. Although they are not lawyers, they have substantial experience of Tribunal proceedings. They both know what procedure to use and that they ought to use it. The fact that they have failed to do so is significant.

7. On 19th September 2024 Judge Percival refused an application from Eagerstates to postpone the hearing. He also noted that the Tribunal hearing the case will decide whether or not to debar the Respondent at the commencement of the hearing.

8. Under rules 8(2)(e) and 9(3) and (7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal has the power to bar the Respondent from participation in the proceedings for its failure to comply with the Tribunal's directions. The directions themselves warned of this, although Eagerstates are already fully aware of these powers from other cases where directions made the same provision, while they have both submitted and defended applications in relation to these powers.

9. Mr Erridge had been unaware of Judge Percival's decision but anticipated that the Tribunal may wish to consider whether to bar the Respondent. He accepted that the Respondent was in default but had no explanation to provide as to why that might be so. He had no evidence to call on and said he could only assist by pointing to any discrepancies he may have spotted in the Applicants' case.

10. The Respondent's only engagement with this case was to make an insufficiently-argued application for an adjournment. Despite being aware of the directions, the Tribunal's practice and procedure and the consequences, the Respondent failed to provide its case or to apply for any amendment to the directions. They were warned in the directions about the Tribunal's powers and in Judge Percival's decision that the Tribunal would consider whether to bar them but they have not responded.

11. The Tribunal is left with no realistic choice but to bar the Respondent from further participation in the proceedings. The Tribunal expects and requires its directions to be complied with – if parties were able to flout them, the Tribunal's work would be substantially disrupted, let alone that other parties would be denied justice. If the Tribunal did not bar the Respondent in circumstances as clear as in this case, it is difficult to see when it ever would exercise that power.

12. The Tribunal informed the parties of the barring decision. Mr Erridge stayed to observe the rest of the hearing but took no part in it. The issues raised by the Applicants are considered in turn below.

Insurance

13. The Respondent charged £4,907.90 for insurance in the year beginning March 2022, and £5,686.38 in the year beginning March 2023. This was a substantial increase from the Tribunal's decision dated 19th May 2023 (case ref: LON/00BJ/LSC/2022/0307) which held that the amount payable for insurance for 2021/22 was £2,048.85 and the estimate for 2022/23 of £2,195.24 was reasonable.

14. The Applicants understood that the increase in the insurance premium was at least partly due to a percentage increase Eagerstates had applied to the sum insured since the property was last valued in June 2022. The Applicants took this valuation and obtained alternative quotes. When their RTM company took over management, they also arranged alternative insurance. They put these insurance figures in a table:

Provider	Total Insurance amount	Excess details (1)	Sum Insured	Include Terrorism?
Allianz	£3,724	£350 property damage £5,000 subsidence £250 3rd party property damage	£1,725,000	with terrorism included
Aviva	£2,877	£350 property damage £1,000 subsidence £500 escape of water	£1,500,000	with terrorism included
NIG (current provider)	£1,615.58	£200 property damage £1,000 subsidence £500 escape of water	£1,500,000	terrorism excluded, £2295 with Terrorism

15. In another previous Tribunal decision dated 1st November 2021 (case ref: LON/00BJ/LS/2021/0148), the Respondent criticised the Applicants' quotation on the basis that the excess for subsidence was £2,500, which some mortgage lenders found unacceptably high. However, a similar criticism could only apply to one of the above quotes. It is notable that the best excess figures were obtained when the RTM company actually placed their business with an insurer.

16. The increases in insurance costs claimed by the Respondent are so high that they require explanation. Due to the Respondent's lack of participation, there is no such explanation. The actual insurance premium achieved by the RTM company seems to be the best comparator. The Tribunal determines that the amount for insurance must be limited to £1,615.58 for each of the two years.

17. The Applicants sought a further reduction of the insurance amount for 2023/24 on the basis that the RTM company took over in December

2023, three-quarters of the way through the service charge year. However, the full premium was paid before the management was handed over. The Respondent would not be able to recover part of the premium. The Applicants also had the benefit of the policy for 12 months, whether or not they arranged alternative insurance before that 12 month period expired. Therefore, there is no further deduction to take account of the shortened service charge year.

Investigation into understairs cupboard

18. The understairs cupboard is located on the ground floor in the communal hallway. It contains two utility supply meters and some associated pipework. It is too small to be used for anything else although it appears that someone has put some rubbish in there from time to time.

19. The Respondent has sought to charge the Applicants £250 for "Investigation into understairs cupboard". This description is not illuminating. The charge requires explanation but there is none. It is difficult to see what "investigation" there could be other than the few seconds it would take Eagerstates themselves to open it and glance inside when they attended to familiarise themselves with the property after the Respondent first purchased the building in 2020.

20. In the circumstances, the Tribunal has no choice but to disallow the entire amount for this item.

Installation of consumer unit blanks against electric shock

21. The Respondent sought to charge £838.80 for the "Installation of consumer unit blanks against electric shock". At first glance, this seems a high figure for attending to the electrical installation in this building with just 6 flats. This was confirmed by the Applicants obtaining an alternative quote for £250. The Tribunal is satisfied that a reasonable charge for this item would have been no more than £250.

Inventory report

22. The Respondent sought to charge £109 for an "Inventory Report". As shown in photos taken by the Applicants in August this year, the communal areas in this building are small, unable to contain anything in the way of furnishings. There would appear to be no inventory to report on. Again, an explanation is required in order to understand this item but none has been forthcoming. Therefore, the Tribunal disallows the whole amount.

Visual Installation Condition Report and Remedial Works

23. The Respondent sought to charge £313.90 for a Visual Installation Condition Report and £1,010.32 for Visual Condition Report Remedial Works. Again, these descriptions are not illuminating so that the charges require explanation but there are none. The Applicants have been aware of contractors visiting to carry out works, Ms Piper saying she has spoken

to at least one of them, but not in relation to these items. None of the Applicants are aware of anything which would indicate that relevant works has been undertaken. As with all the charges, they asked Eagerstates for an explanation but got none for these items. Therefore, the Tribunal disallows the whole amounts.

Various FHS remedial works and Miscellaneous repairs to fire cupboards

24. The Respondent sought to charge £3,000 for "Various FHS Remedial works" (separately from another item for "Fire Health & Safety and AOV Testing, Services and Repairs"). The Applicants believe "FHS" refers to Fire, Health and Safety and that it refers to work to 3 fire doors in the property. There were separate invoices for each door but they were clearly one set of works, as indicated by Eagerstates grouping them together in their accounts.

25. Despite the fact that the cost of these works exceeded the statutory limit of £250 per flat, no consultation was conducted in accordance with section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. There is no application for dispensation from the consultation requirements and so the limit of £250 per flat applies for a total of £1,500.

26. The Applicants obtained an alternative quote of £1,850 but that is irrelevant given the limitation already referred to.

27. The Respondent also sought to charge a separate sum of £900 for miscellaneous repairs to fire cupboards. There is no indication as to how this differs from the works already done. It is also problematic in that the fire doors have been left in a poor state – they do not close and one of the photos provided by the Applicants indicates that the handle on one door consists of just a hole. Again, this demands an explanation but there is none and so the Tribunal disallows the whole amount.

Standard and advanced audits and works to "risers"

28. The Respondent sought to charge £1,485 each for "audits" to an "internal riser" and an "external riser". However, the building does not contain any risers. The Applicants guessed that Eagerstates were referring to the electrical cupboards, not least because Ms Piper met and spoke to the electrician responsible for this work.

29. The Respondent also sought to charge £1,140 for works to the "internal riser" and £939.38 to the "external riser". The Applicants do not understand why the "audits" or works were separated into two parts. The building was originally in two parts but now has a common entrance and access staircase with flats off it on one side or the other. Ms Piper observed that the works were done by the one electrician on one day. The Tribunal is satisfied that the "audits" and the works each constitute one set of works which, again, were subject to the aforementioned statutory consultation requirements. Therefore, again, the amount charged must be limited to £250 per flat at most for the audits and for the works.

30. However, the Applicants obtained quotes of £750 and £540 from two contractors to carry out standard electrical inspections. Like the Applicants, given the lack of any explanation from the Respondent, the Tribunal struggles to understand how the "audits" differ from standard electrical inspections. In the circumstances, the Tribunal has determined that the charge for the two "audits" must be limited to £750 in total.

31. Additionally, there was a call-out charge of £456 for an abortive visit which the Respondent has sought to pass on to the Applicants despite their warning Eagerstates that none of them was available that day to provide access. The Respondent has provided no explanation as to why the Applicants should bear this cost in the circumstances and so the whole amount is disallowed.

Call out charge for tripped RCD

32. The Respondent sought to charge for a call-out charge of £234, allegedly for a tripped RCD. However, none of the Applicants triggered any such call-out. The Applicants sought an explanation from Eagerstates but none was provided. In the circumstances, the Tribunal disallows the whole amount.

Removal and disposal of rubbish in riser cupboards

33. The Respondent sought to charge £480 for "Removal and disposal of rubbish in riser cupboards". Again, since there are no risers in the building, the Applicants assumed that this referred to the electrical cupboards. As shown by one of their photos, rubbish is sometimes left inappropriately in those cupboards. However, the Applicants obtained an alternative quote of £72 for the removal of 50kg which should be more than enough given the small amount of room in each of the three cupboards.

34. Again, in the absence of any explanation from the Respondent, the Tribunal has decided to limit the charge to £72.

Fire safety signage

35. The Respondent sought to charge £144 for fire signage. However, there had been another charge of £120 for the same thing the previous year while the Applicants had not seen any new signage. This appears to be a duplicate charge and the Tribunal has disallowed the entire amount.

Parapet wall works

36. The Respondent sought to charge £978 for parapet wall works. However, the parapet is only accessible through one of the two top floor flats and the Applicants whose flats they are know that no-one has obtained access. The property is right on the street and such work could not be done by scaffolding or other means such as a cherry-picker without substantial disruption and organisation for which there is no charge

claimed. In the circumstances, the Tribunal cannot see how this charge may be justified and has disallowed the entire amount.

Gritting of communal pathway

37. The Respondent sought to charge £60 for gritting a communal footpath. However, the subject property opens straight onto the street and so there is no communal footpath. Again, the entire cost must be disallowed.

Management fees and cleaning

38. The Respondent only provided management and cleaning services for three-quarters of the service charge year 2023/24 but sought to charge the full amounts of £1,900.80 and £1,518.80 respectively. They should be reduced to reflect the shorter period of time to £1,425.60 and £1,139.10 respectively.

Costs

39. In their application, the Applicants sought three orders in relation to costs:

    (a) The Applicants paid a fee to the Tribunal of £110 for their application and £250 for the hearing. They have been incurred due to the Respondent's failure even to try to justify the service charges they sought to impose. The Tribunal is satisfied that it is appropriate to order the Respondent to reimburse the Applicants the total sum of £360.

    (b) The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985 to prohibit the Respondent from seeking to recover any costs incurred in the proceedings through the service charge. It is not clear, given their lack of participation, that the Respondent did incur any costs other than Mr Erridge's brief fee. In any event, given the Respondent's lack of engagement in the proceedings, it would be neither just nor equitable to allow them to recover anything and so the Tribunal makes the order.

    (c) Further, the Applicants sought an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any costs incurred in these proceedings by direct charge to one or more of the Applicants. For the same reasons as those for the section 20C order, the Tribunal grants the order.

Name: Judge Nicol **Date:** 4th October 2024

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

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

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

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

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

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

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