FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AK/LSC/2023/0387**
Property	**:**	**Flats 24, 27, 28, 30, 32, 34, 49, and 50 Boundary Court, Snells Park, London, N18 2TB**
Applicants	**:**	**1) Ms M Arthur – Flat 24** **2) Mr J Olorunnisola – Flat 27** **3) Ms M Fernandez – Flat 28** **4) Mrs L Cooper– Flat 30** **5) Mr E Barnum & Ms S Ntramg – Flat 32** **6) Mr F Fordjour – Flat 34** **7) Mr M Njoku – Flat 49** **8) Ms F Zeneli – Flat 50**
Representative	**:**	**Mr G Harvey – Flat 30** **Mr M Njoku – Flat 49**
Respondent	**:**	**London Borough of Enfield**
Representative	**:**	**Ms Zeitler (counsel)**
Type of application	**:**	**For a determination of the payability of service charges under S27A Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Tueje** **Mrs A Flynn MA MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**5th July 2024**
Date of decision	**:**	**24th September 2024**

DECISION

In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.

DECISION OF THE TRIBUNAL

The Tribunal makes the determinations set out below at paragraphs 30 to 84 below. We note 9th August 2024 was the date by which the Respondent was to send its written closing submissions in reply, if so advised. We note also the time that has elapsed since then, and would like to thank the parties for their patience.

THE APPLICATION

1. By their Application dated 29th September 2023, the Applicants seek a determination pursuant to section 27A, as to the amount payable for certain items of the service charge expenditure for 2021/2022, and estimated costs towards renewing the roof for the service charge year 2022/2023.

THE HEARING

2. The final hearing of the Application took place on 5th July 2024.

3. At the hearing the Applicants were not legally represented: they were represented by Mr Harvey, a resident at 30 Boundary Court, and Mr Njoku, the leaseholder of 49 Boundary Court.

4. The Applicants relied on the written and oral evidence of the following witnesses:
   - 4.1 Geoffrey Harvey, whose witness statement is dated 5th February 2024;
   - 4.2 Juan Villar Soto, whose statement is dated 7th February 2024; and
   - 4.3 Euzebius Macqueen Njoku, whose witness statement is dated 11th February 2024.

5. The Applicants provided the Tribunal with the following documents:
   - 5.1 A 579-page indexed and paginated electronic bundle;
   - 5.2 Written representations dated 28th June 2024, responding to Ms Shah's witness statement dated 28th May 2024.
   - 5.3 Written representations dated 28th June 2024, responding to Ms Raval's second witness statement.
   - 5.4 Written representations dated 29th June 2024, responding to Mr Mehta's witness statement dated 27th June 2024.
   - 5.5 A 5-page skeleton argument dated 28th June 2024.
   - 5.6 A copy of an e-mail sent by Mr Harvey to Mr Mehta on 12th February at 20:19.The year this e-mails was sent is not included in the printed copy, but Mr Harvey says it was sent on 12th February 2024, and we recall at the hearing on 2nd April 2024, the Respondent's counsel was shown a copy of the e-mail and didn't dispute the date the e-mail was sent.

6. The Respondent was represented by Ms Zeitler, counsel. The Respondent provided a 849-page indexed and paginated electronic bundle, containing witness statements from the following employees:
   6.1 The Respondent's Manager for Major Works, Rents & Service Charges, Housing, Regeneration and Development, Erica Raval dated 29th January 2024, and 31st May 2024; and
   6.2 The Respondent's Acting Head of Capital Programme, Bini Shah dated 28th May 2024.

7. Before hearing any evidence, the Tribunal dealt with various applications made by the parties.

The Respondent's Applications

8. Firstly, the Respondent applied to strike out the Application because the Applicants had prepared a hearing bundle without first seeking to agree the contents with the Respondent. We refused that request on the grounds that the directions order dated 3rd April 2024 provided for each party to prepare their own bundle. The Applicants preparation of their bundle had not breached the directions order, therefore taking such a serious procedural step to dismiss the Application was not justified.

9. Secondly the Respondent submitted the Applicants should not be permitted to rely on the documents referred to at paragraphs 5.2 to 5.4 because there was no provision for these in the directions order. We refused that application on the grounds that the documents simply set out in writing matters that the Applicants would otherwise seek to argue orally. Therefore, admitting the documents was likely to save time, would cause no prejudice to the Respondent, who had in fact now had advanced notice of the arguments to be made at the hearing.

10. Thirdly, the Respondents requested that Mr Harvey should not be permitted to represent the Applicants because he is not a leaseholder. We refused that application on the grounds that if there was any objection to Mr Harvey representing the Applicants that should have been raised earlier. To prevent him from representing the parties on a request made without notice would be likely to prejudice the Applicants' ability to present the case. We also took into account that the Applicants are not legally represented, and at the hearing on 2nd April 2024, the Respondent's counsel had raised no objections to Mr Harvey representing the Applicants.

11. All of the Respondent's applications lacked merit, and it was surprising that a social landlord, represented by counsel, saw fit to make these applications. Particularly in light of the order made by Judge Carr requiring the Respondent to show cause why a costs order should not be made in respect of the adjournment of the final hearing that had been due to take place on 2nd April 2024. We note Mr Mehta's witness statement clarified that he had inadvertently provided incorrect information to counsel, Mr Anderson, who consequently and unwittingly provided incorrect information to the Tribunal. Judge Carr's order also required the Respondent had been asked

to deal with its systems for process documents or to otherwise explain why it had not received the Applicants' witness statements sent on 12th February 2024. Mr Mehta's statement failed to deal with this. That is a serious failing given that Judge Carr's directions required the Respondent to show cause. However, as the Applicants have made no claim in respect of costs or fees against the Respondent, and the Tribunal is a no-costs jurisdiction, we concluded the appropriate course was to make no order regarding costs. And incidentally, we understand that the Applicants have not incurred legal costs.

The Applicants' Applications

12. The Applicants applied to debar the Respondent from participating in the hearing on the grounds that the heading of its witnesses' statements included a leaseholder who was no longer an applicant. They argued, consequently the statement of truth in those witness statements were inaccurate, therefore the Respondent should be debarred from defending. We refused that request, because even though the heading of the witness statements were incorrect, we have no reason to doubt Ms Raval and Ms Shah believed the evidence contained within the witness statements was inaccurate.

Closing Submissions

13. After dealing with the parties' applications and hearing evidence from the witnesses, there was insufficient time to deal with closing submissions. Accordingly, the parties were directed to provide written closing submissions as follows:
    13.1 Written submissions from the Respondent by 19th July 2024;
    13.2 Written submissions from the Applicants by 2nd August 2024;
    13.3 The Respondent was to provide written submissions in reply on legal points by 9th August 2024, if so advised.

14. The parties were also asked to consider the case of *Continental Property Ventures Inc v White [2006] 1 E.G.L.R 85*, when making their submissions.

15. The parties duly submitted their written closing submissions: the Respondent submitted 13-page submissions dated 19th July 2024; the Applicants 12-page submissions are undated. The Respondent elected not to provide submissions in reply.

16. The Applicants' submissions raise certain matters that are not included in the Application, and which the Respondent has therefore not had a proper opportunity to respond to.

17. This determination focuses on the items set out in the Application and the Tribunal's schedule, namely a new roof, lift repairs and works relating to the water pressure. It will be based on the oral evidence given at the hearing, the parties' witness statements, and relevant documents within their respective bundles.

18. The closing written submissions will also be taken into account, except that any new factual assertions will not be taken into account. For example, while the Applicants have made general complaints about the Respondent's contractors using the lifts to transport building material and debris, there was no prior direct evidence as to how doing so allegedly damaged the lifts. They seek to adduce such evidence at the second paragraph on page 3 of their closing submissions. The Tribunal will not take this into account because the Respondent has not had a proper opportunity to respond. Similarly, the Tribunal will not take into account the matters referred at paragraph 20(i) of the Applicants' closing submissions relating to Mr Harvey's visit to 47 Boundary Court. Nor any other fresh evidence contained within the Applicants submissions.

THE BACKGROUND

19. The application relates to whether service charges are payable by the leaseholders of Flats 21, 24, 27, 28, 30, 32, 34, 49 and 50 Boundary Court, Snells Park, London N18 2TB. Boundary court is a purpose-built block comprising 50 maisonettes arranged over seven floors (the "Block"), and served by two lifts.

20. The respondent is the freeholder of the property, and except for Mr Harvey who is a resident of 30 boundary close, all other applicants are leaseholders. The Applicants leases are contained within the applicants hearing bundle, and in all material respects, the leases contain substantially the same terms.

21. Clauses 3(2)(B) of the leases deal with payment of service charges for repairs, services and major works. The Respondent's repairing obligations in respect of the structure and exterior are at clause 7(2)(a), while its obligations to repair and provide services to the estate and the Block are contained in the Fourth Schedule.

THE LEGISLATION

22. The definition of service charges is found at section 18, which reads:

> ***18.— Meaning 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 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.

23. Section 19 deals with the reasonableness of service charges, it states:

19.- Limitation of service charges: reasonableness
(1) Relevant costs shall be taken into account in determining the amount of 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.

(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.

24. Section 27A deals with the Tribunal's jurisdiction to determine the reasonableness of service charges. It reads:

27A Liability to pay service charges: jurisdiction
(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.

THE ISSUES

25. As stated, the issue for determination is the amount payable for certain items of the service charge expenditure for 2021/2022, and estimated costs towards renewing the roof for the service charge year 2022/2023. The disputed costs are set out in the Tribunals standard Schedule of Disputed Service Charges (the "Schedule") which is at pages 41 to 43 of the Applicants' hearing bundle.

26. The Tribunal reached its decision after considering the oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence.

27. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised, or documents not specifically mentioned, were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

28. Unless otherwise stated, costs in this determination represent the global cost of the works or services referred to in respect of the Block.

THE TRIBUNAL'S DECISION

29. The case papers indicate that the Applicants have longstanding concerns regarding the Respondent's management of the Block, about repairs the latter has arranged and the service it provides. However, some of these concerns are not matters the Tribunal has jurisdiction to deal with under section 27A, for instance complaints regarding the time it takes the Respondent to deal with enquiries. Although it's evident the Applicants feel aggrieved about how the Block has been managed, there is no corresponding challenge to the management fee.

30. Another area of concern expressed by the Applicants relates to the major works carried out between around 2011 to 2013. They complain about the contractors' behaviour and attitude onsite, and the standard of work carried out. As explained below, this has some relevance as regards the replacement roof fitted as part of these major works. But its relevance relates primarily to whether those works were covered by an insurance backed guarantee, rather than the standard of works carried out.

The Roof

The Tribunal's Decision

31. The Tribunal determines that £2,105.74, being the estimated amount claimed for renewing the roof, is a greater amount than is reasonable, accordingly we find that £1,263.44 is the amount payable in respect of each leasehold property.

Reasons for the Tribunal's Decision

32. The Applicants 2022/2023 service charges include an estimated £106,495.00, to replace the Block's roof, which amounts to £2,105.74 per leasehold property.

33. Essentially the Applicants complain that the typical lifespan of a flat roof is at least 20 years, so the roof fitted around 12 years ago should not need to be replaced so soon.

34. The history behind this dispute is that between around 2011 to 2013 the Respondent engaged RR Richardson Limited to carry out major works. Those works included renewing the Block's roof. The Applicant's unchallenged evidence is that RR Richardson Ltd sub-contracted out to another firm. RR Richardson Limited subsequently went into liquidation in around November 2014.

35. It is common ground that the Applicants were not invoiced for the cost of renewing the roof.

36. The Applicants have provided an extract from the specification of works, paragraph B3.69 of which states:

    Provide single payment 20 Year insurance backed Guarantee in the name of the client upon completion of the works as J41 Clause 200 & 910A.

37. Over time, parts of the roof required maintenance and repairs. It seems that because RR Richardson Limited had gone into liquidation, the Respondent arranged for its own maintenance contractors to carry out the repairs required to the roof. The Applicants note they have been charged for the cost of these repairs, which between February 2018 to August 2021 amounted to £6,260.92. But those costs are not included in the Schedule as being part of the challenge.

38. Part of the Applicants' argument is that because the typical lifespan of a roof exceeds 20 years, if the replacement roof had been correctly installed, it would not require replacement. They also argue that as a replacement roof is required 11 years later, the costs should be covered by the guarantee.

39. Some of the Applicants have doubts as to whether the insurance backed guarantee was in fact taken out, and the Respondent has not provided a copy of the guarantee. The Applicants' position is that if there was no insurance backed guarantee, that was an unjustifiable failure to adhere to the specification of works. Alternatively, they say, if there was an insurance backed guarantee, it should cover the cost of renewing the roof that is now required.

40. Ms Raval did not have any involvement with the past works carried out to the roof. Nor did Ms Shah, who wasn't working for the Respondent when the major works were carried out. Therefore, neither have any direct knowledge about whether there was an insurance backed guarantee.

41. However, based on correspondence exchanged between the parties, there is evidence that there is a guarantee.

42. After making enquiries of its project team, in an e-mail sent on 7th June 2023, the Respondent's Home Ownership, Major Works, Rents & Service Charge team writes:

    Dear Boundary Court Leaseholders,

Thank you for your inquiry dated 3rd May 2023 and apologies for the delay in responding to you. As the warranty and guarantee have been voided due to the repairs carried out over the years by our maintenance department, we cannot claim this back via insurance as this warranty does not cover claims against a number of items but in particular remedial works carried out by persons other than the original roofing contractor.

We hope this satisfies your related concerns with the roof work

43. It's perhaps a little surprising that the guarantee contained such a term because an insurance backed guarantee is generally intended to include cover where the original contractor goes into liquidation. However, the e-mail appears to have been written following enquiries being made of someone with the relevant information. In this case, the Respondent explains its own maintenance contractors carried out repairs because the original major works contractor had gone into liquidation, so was unable to do the repairs. However, when questioned by the Tribunal, Ms Shah stated no enquiries were made to establish whether, if the sub-contractor engaged by RR Richardson had carried out the repairs instead of the Respondent's maintenance contractors, that would have invalidated the guarantee.

44. As to the current cost of renewing the roof, the Respondent's position is summarised in the Schedule is as follows:

As the freeholder of the block 3-50 foundry court, we are responsible for the repair, maintenance and services and the roof replacement works where necessary. The apportionment is based on rateable value of property 227 and block rateable value of 10896. Each leaseholder has been invoiced for £2,105.74 and is equivalent to 2.08% of the roofing works

45. The Tribunal asked the parties to consider the Lands Tribunal's decision in *Continental Property Ventures Inc v White [2006] 1 E.G.L.R 85* where leaseholders applied to the Tribunal seeking a determination under section 27A seeking a determination as to whether certain costs were reasonably incurred. Their application included the cost of damp-proofing works, which the leaseholders argued were not reasonably incurred because these costs were covered by a guarantee, so the work done could have been carried out at no cost.

46. Regarding this aspect of the case, the Lands Tribunal stated:

The LVT held as a matter of fact that the landlord could have had the Guarantee Works carried out under the Guarantee at no charge. It concluded therefore that to carry out those works at a cost was to incur the cost other than reasonably. Unless there was evidence of some disadvantage or good reason to reject the availability of the works without cost in favour of incurring a cost, this seems to me to be incontrovertible.

47. Ms Zeitler deals with this authority in her closing submissions, stating it doesn't assist the Applicants. She argues:

47. In the first instance, the Applicants have provided no evidence that the 2011 works were covered by a guarantee. That there was a guarantee is pure supposition.

48. Further, even if it is assumed there was a guarantee, it is questionable whether that guarantee would have been enforceable in circumstances, were the contractors carrying out the roof works in 2011 had gone into administration ***[p. 146]****.*

49. Most importantly, the service charges in Continental Ventures were not reasonably incurred because service charges had previously been levied for works, for which there was a guarantee in place. Continental Ventures is distinguishable form the present case in that, here, the Applicants were not charged for the 2011 roof works.

48. We disagree with the following aspects of Ms Zeitler's arguments.

49. Firstly, we do not accept that it is *"pure supposition"* that there was a guarantee. The Applicants have provided the relevant extract from the specification of works which shows obtaining the guarantee was a requirement. There is also the e-mail sent on 7th June 2023 referring to certain terms of the guarantee (see paragraph 42 above).

50. Ms Zeitler's second point is that it's questionable whether the guarantee would have been enforceable because the contractors went into liquidation, but that is not the full picture. It is common ground that RR Richardson Limited went into liquidation. However, the Applicants' unchallenged evidence is that RR Richardson Limited sub-contracted out the work to specialist roof contractors. So, it was the sub-contractor who actually carried out the work. In answer to questions from the Tribunal, Ms Shah stated she was not aware of any enquires being made to establish whether the roof guarantee would have remained valid if the sub-contractors had carried out the roof repairs that were in fact carried out by the Respondent's maintenance. Given the cost of renewing the roof, the Respondent's failure to make those enquiries cannot be justified.

51. Ms Zeitler's next point is that "*… the service charges in Continental Ventures were not reasonably incurred because service charges had previously been levied for works, for which there was a guarantee in place. Continental Ventures is distinguishable form the present case in that, here, the Applicants were not charged for the 2011 roof works.*"

52. Again we do not accept this argument. We do not consider *Continental Ventures* is distinguishable because the Applicants did not pay for the previous roof works. The reasoning in *Continental Ventures* is that the costs were not reasonably incurred because the landlord had paid for the works, instead of using the guarantee which would have allowed the works to be done at no cost. In our judgment, it was the existence of the guarantee, and the landlord's failure to use it in that case that was the material issue. How the guarantee came to be in place, whether as a result of the works being paid for by leaseholders or the freeholder, was beside the point.

53. Although we have found it's more likely than not that the guarantee was taken out, we have not seen it, and so we are unaware of the terms and conditions. However, the Respondent's e-mail of 7th June 2023 indicates that had the original roof contractors (i.e. the subcontractors) carried out subsequent repairs instead of the Respondent's maintenance contractors, the guarantee would have been valid. That is because the e-mail says: *"… the warranty and guarantee have been voided due to the repairs carried out over the years by our maintenance department, … as this warranty does not cover claims against a number of items but in particular remedial works carried out by persons other than the original roofing contractor*.

54. We note that RR Richardson Limited were not *"the original roofing contractor",* the sub-contractor was. So, at the very least, before engaging its own maintenance contractors to carry out repairs, the Respondent should have enquired whether the guarantee would have remained valid if the original roofing contractors carried out subsequent repairs. It is also unsatisfactory that the Respondent has not provided a copy of the guarantee when it seems to have been available as recently as June 2023 for the project team to inspect its terms and report back to Respondent's Home Ownership, Major Works, Rents & Service Charge team. This is compounded by the Respondent's witnesses being unable to provide evidence regarding the insurance.

55. Doing the best that we can to assess such evidence the Respondent has provided in respect of the terms of the insurance, we consider there is an insurance backed guarantee taken out in the Respondent's name, as the specification of works requires. We conclude it's more likely than not that despite RR Richardson Limited's liquidation, the guarantee would have remained valid had the Respondent engaged the original sub-contractors to carry out subsequent roofing repairs.

56. The Respondent's stated reason for not claiming the cost of the works through the guarantee is that the guarantee was invalidated. However, we do not consider there is a good reason for why the Respondent failed to comply with the terms of the guarantee by engaging the original roofing contractor to carry out the works it asked its own maintenance contractors to do.

57. We take into account that even if the guarantee was still valid and was used to cover works now needed to the roof, we do not know whether it would have covered the cost of an entirely new roof, as opposed to repairs. Therefore, we consider it is appropriate that our decision as to what costs are reasonable, reflects that the Block will be benefitting from a new roof which may or may not have been the case under the guarantee. Based on the fact that there would have been 8 unexpired years on the 20-year guarantee, which is 40%, we consider there should be a 40% reduction to the service charges payable by the Applicants. Therefore, we consider it is reasonable that they pay £1,263.44 each instead of the £2,105.74 being claimed.

Works to the Water Pressure

The Tribunal's Decision

58. The Tribunal determines that the amount claimed for works in respect of the water pressure in the Block is unreasonable. Accordingly, we reduce this cost to £345.58 in respect of these works to the Block in 2020/2021.

Reasons for the Tribunal's Decision

59. Mr Harvey provided oral evidence at the final hearing regarding the water pressure. That evidence was consistent with paragraph 10 of his witness statement which reads:

In reference to the water loss to the upper floors, this was caused by the replacement of booster pumps and fitting of chlorinators. These pumps were installed because the water company dropped the water pressure to the Block and they are only obliged to ensure that residents up to the third floor level get water from the street supply. The upper levels then became Enfield council's responsibility. When these pumps were installed the contractor did not connect part of the Block to the supply. This caused the 5th and 7th floor to have no cold water supply at most times. This went on for approximately 2 years before a solution was found.

After around 10-12 visits from the councils plumbers, each time saying that they have reset the pumps it was investigated further, I personally worked with the plumber/ manager that showed an interest to deal with this problem once and for all. Between us we found that there was no connection to the upper floors pumped supply. This was due to the original installation not being done correctly. We were charged for all the visits, and the last job to put the problem right. A total of around £7262.00. Mainly because of unskilled and unsupervised staff….

Once the connection was made we had no further problems.

60. In the Schedule, the Applicants' complaint regarding this cost relates to the service charge period 2021/2022. The Applicants' entry on the Schedule reads as follows:

Ongoing lack of knowledge Regards of people involved and this made the cost very high. Over two years there were literally dozens of call outs and charges made but still no water to the upper floors.

61. However, in their closing submissions, the Applicants also seek to challenge costs from 31st July 2018 to 28th August 2018. We do not consider it would be appropriate to do so. Although the global amount of £7,262.00 that's in the Schedule includes the 2018 costs, because the Applicants had not previously provided a breakdown of the 2018 costs, the Respondent was not on notice that these specific costs were being challenged, and so we have not dealt with them. Therefore, allowing the Applicants to challenge these costs

when the Respondent has not had a proper opportunity to respond is likely to prejudice the latter.

62. The Applicants' bundle contained a document titled Repairs Listing, and subtitled Actual Cost of Repairs for 1st April 2020 to 31st March 2021 (see pages 64 to 68). This document contains the reports received, and costs incurred, in connection with the water pressure as set out below.

Work Order Number	**Description of Work**	**Location**	**Completion Date**	**Block Cost (£)**
2237801/1	Mains Water Booster Pumps Defective Flat 30 & 32 Effected No Water to Kitchen Please Report Back Findings	Basement	07-Feb-20	73.35
2244008/1	Hourly Rate Heating Engineer Attend to Defective Boosters	Booster Room	02-Mar-20	73.35
2248668/1	Mains Water Booster Pumps Defective- No Service Water In Communal Cold Water Storage Tanks	Basement	05-Mar-20	122.45
2255121/1	Check Booster Pumps	Booster Pumps	25-Mar-20	110.03
2255596/1	No Drinking Water To The Building Flat 49 Reports All Flats Affecting	All Of Property	27-Mar-20	79.46
2256222/1	Hourly Rate Heating Engineer	Booster Room	31-Mar-20	24.45
2257347/1	Flat 29 Reports No Drinking Water ... - No Water At All In The Bathroom**Neighbours Are Affected	All Of Property	03-Apr-20	61.13
2258150/1	Low Water Pressure To All Taps (Except Kitchen Cold Water Tap) Affecting Flat 29 Please Attend Urgently	Flat 29	07-Apr-20	91.46
2258192/1	**Make Safe Call Out**Caller Is Reporting , Total Loss Of Service And Drinking Water , Effecting 50 Flats In The Block , Enf130560 On 22 / 12 / 19	All Of Property	22-Dec-19	76.43
2258948/1	General Repairs (Quoted Works) Convert Mains Water to Boosted	Booster Pumps	23-Apr-20	4,975.00
	TOTAL COSTS			**£5,687.11**

63. These figures do not include a microbicide treatment of the water supply on 27th May 2020, because it is not relevant to problems with the water pressure. The total amount in the above table is slightly different to the Respondent's figure of £5,843.40 recorded in the Schedule. But as the Respondent has not provided a breakdown of how it calculated its figure, we have used our calculations.

64. Ms Raval's evidence is that she had no direct involvement with organising these repairs. Ms Shah, doesn't deal with routine repairs, so was also unable to assist regarding organising these works. Therefore, the Respondent's witnesses are not in a position to challenge the Applicants' account of the inadequate water supply, that this was due to upper floors not being connected to the water pumps, and the various unsuccessful attempts to remedy this.

65. In the Schedule, the Respondent dealt with these costs as follows:

Reviewing the actual cost of repairs reported in our service charge 2021/ 2022. There are no repairs relating to the water pumps. The actual cost of water pump repairs are reported in 2020/ 21 service charge statement totaling £5843.40. The apportioned share was £121.74

66. The Respondent complained that by erroneously claiming these charges were part of the 2021/2022 charges, instead of the 2020/2021 charges, the Applicant had failed to particularise this aspect of their Application.

67. In her second witness statement dated 31st May 2024, Ms Raval states (see paragraph 7 of the statement):

Service charge dispute of £7262.00 in paragraph 10 of Mr Harvey's statement regarding water pressure booster pumps is not an issue on which determination is sought by the Applicants in their Application before the tribunal. However, the work was necessary, and I would comment as follows, schedule 4(2)(viii) of the Lease the Lessee Common Repairs and Services

"Any other equipment plant or machinery used in common by the lessee the council and other occupiers of the Block."

68. However, the Respondent was able to identify and respond to the allegation as set out in the Schedule. Ms Zeitler addressed this at paragraphs 37 to 39 of her written submissions. Therefore, in our judgment, the Respondents have not suffered any prejudice by allowing the Applicants to pursue a challenge in respect of these costs for 2020/2021.

69. The Respondent states it was reasonable to engage contractors to investigate problems with the water supply, consequently the contractors' cost of doing so was also reasonable.

70. As the Respondent is unable to provide any direct evidence regarding these repairs, we accept Mr Harvey's evidence about the history of this problem. Therefore, we find that in or around 2018 water pumps were fitted. But that residents, particularly those on the upper floors, experienced repeated problems with the water pressure in their flats. We accept that there were numerous visits, but the problem continued for around two years. At that time, a contractor identified the problem after carrying out investigations. He discovered some upper floors were not connected to the water pumps and rectified this. Following which, the problem has not reoccurred. We note this evidence is consistent with the information in the Repairs Listing document showing numerous complaints, with contractors visiting. This culminated in a visit on 23rd April 2020, the description of works states it was to convert the mains water supply to pumps. The cost of works carried out during that visit was £4,975.

71. Based on the Repairs Listings and these findings, we consider it was reasonable for the Respondent to incur the costs relating to some visits in an attempt to address complaints regarding the water supply. We consider

the first four visits were reasonable, being the visits on 22nd December 2019, 7th February 2020, 2nd March 2020 and 5th March 2020, which costs amounted to £345.58. That is because the first report stated all flats in the Block were affected, the second and third reports are less clear. However, the fourth report indicates a Block wide issue, and as there had been three visits within recent months regarding water pressure, that should have triggered a proper inspection and identification of the cause.

72. We also do not consider it is reasonable that the Applicants should pay for the cost of the works completed on 23rd April 2020 to convert the water to a boosted supply. We understand that was the work carried out in around 2018, and the upper floor flats should have been connected during those works. It appears the flats were not connected, but we do not consider it is reasonable that Applicants should pay for works that should have been done as part of earlier works that have already been paid for.

Lift Repairs and Maintenance

The Tribunal's Decision

73. The Tribunal determines that the amount claimed in respect of lift repairs and maintenance for 2021/2022, being £10,802.74, is reasonable.

Reasons for the Tribunal's Decision

74. The Applicants grievance regarding the lifts is that both lifts in their Block were replaced in around 2011/2021. Shortly afterwards, the flats were refurbished, and the contractors used the lifts to transport building material and debris, instead of using the hoists on the scaffolding. This complaint is not quantified, nor is it included in the Schedule, where the cost of the lift repairs being challenged relate to service charge year 2021/2022. Therefore, our decision relates only to the service charge year 2021/2022.

75. The Applicants were also concerned that, despite there being a lift maintenance contract in place, leaseholders were being charged for reactive lift repairs. However, the Respondent's evidence is that these repairs are being invoiced because the maintenance contract was discontinued, and the Applicants accept that is now the case.

76. In the Schedule, the Applicants' complaint regarding this cost reads as follows:

No explanation of the causes of these repairs. We have asked for the explanations but no answer to date from the repairs team.

77. The respondent provides its response in the schedule, which reads:

In our response dated 27th April 2023 invoice evidence of the work to the left and an explanation was provided. Please see attached

78. The e-mailed response and invoices referred to, deal with costs relating to the following invoices:

- Invoice number RQ185133 dated 4th January 2022 – £1,617.80 plus VAT to replace water damaged Pana40+ safety edges to lift ENF13.

- Invoice number RQ182741 dated 22nd October 2021 – £1,861.60 plus VAT to replace water damaged GAL door gear board to lift ENF14.

- Invoice number RQ175739 dated 12th May 2021 – £2,421.50 plus VAT to supply and fit a new lift car sub sill, new car sill, new door shoes and new fixings to lift ENF14.

- Invoice number RQ17 Right4312 dated 14th April 2021 – £1,376.39 plus VAT for parts and labour to upgrade two car lights to LED fittings with emergency backup to lift ENF 14.

- Invoice number RQ174016 dated 8th April 2021 – £1,376.39 plus VAT for parts and labour to upgrade two car lights to LED fittings with emergency backup to lift ENF 13.

- Invoice number RQ173937 dated 6th April 2021 – £1,550.36 plus VAT to for parts and labour to replace water damaged safety edges to lift ENF14.

79. Additional invoices are below. These relate to the periodic upgrading in respect of both lifts of the SIM cards which hold data for the lifts. These costs include repairing the auto dialller, and are as follows:

- Invoice number RQ173753 dated 29th March 2021 – £334.00 plus VAT to supply and fit a 36-month SIM card to lift ENF14.

- Invoice number RQ173755 dated 29th March 2021 – £334.00 plus VAT to supply and fit a 36-month SIM card to lift ENF13.

80. The Applicants correctly point out that a number of invoices relate to water damage. In his oral evidence, Mr Harvey accepted that if there were defects with the lift they needed to be rectified, and that leaseholders were liable to pay a share of those costs. But the Applicants' concern is regarding the cause of the water damage referred to in some invoices. They also complain that the Respondent has failed to address this concern despite repeated requests.

81. A copy of the Respondent's e-mail sent on 27th April 2023 is in the Applicants' bundle, and it provides no explanation as to how water damage may have been caused to the lift or its parts. In her oral evidence Ms Raval was also unable to explain this. Although she has made enquiries of the former lift contractors about the cause of the water damage, but they had not responded to her enquiries prior to the final hearing. Her evidence was that the costs are reasonable because they are for the payments that have been invoiced, and there was no reason to doubt the accuracy of the invoices.

82. We understand the Applicants would like an explanation of how the lifts sustained water damage. However, we consider the Respondent's approach to these costs is reasonable. We find it was reasonable to accept the explanation provided by the contractors as to the cause of defects, and so to pay the sums invoiced. We have not been presented with evidence that would justify doubting the accuracy of the invoices, even though some of the damage is unexplained.

83. The Applicants also complain about the cost of the replacement SIM cards for the lifts at £1,987.70 in 2020. The Respondents state that price included replacing the auto diallers. Additionally, it is established law that a landlord is not obliged to take the cheapest option. The Applicants have not provided an alternative quote for the cost of a replacement lift SIM card, and so have failed to provide an evidential basis for challenging this cost.

84. Therefore we consider that for 2021/2022 the reasonable costs for lift repairs was £10,802.74.

Name: Judge Tueje **Date:** 24th September 2024

Rights of appeal

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

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

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

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

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

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