



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

Case reference : CAM/22UB/LSC/2023/0040 & 0074
CAM/22UB/LSC/2024/0002

Property : 3 & 6 Hawkley House, 24-26 Chapel
Street, Billericay, Essex CM12 9LU

Applicants : 1. Robert Smith and Bethany Summerell
(Flat 6)
2. Hayley Watson (Flat 3)

Respondent : Assehold Limited

Representative : Sam White, Counsel

Type of application : For the determination of the
reasonableness of and the liability to
pay service charges and administration
charges

Tribunal members : Judge K. Seward
Mrs S. Redmond BSc ECON MRICS

Date of hearing : 17 February 2025

Date of decision : 21 February 2025

DECISION AND REASONS

Decisions of the Tribunal

For the following reasons:

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) 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 Applicants through any service charge.
- (3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to extinguish any liability of the Applicants to pay an administration charge in respect of litigation costs incurred in these proceedings.
- (4) The Tribunal determines that the Respondent shall pay the First Applicants £310.00 within 28 days of this Decision, in reimbursement of Tribunal fees.
- (5) The Tribunal determines that the Respondent shall pay the Second Applicant £210.00 within 28 days of this Decision, in reimbursement of Tribunal fees.

REASONS

The applications

1. There are three applications before the Tribunal. All seek determinations pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicants. The applications concern Flats 3 and 6 Hawkley House.
2. The First Applicants are the leaseholders of Flat 6. They applied in July 2023 for a determination of the payability of a service charge of £511.76 for 2020/21 (CAM/2UB/LSC/2023/0040). The First Applicants made a further application in November 2023 (CAM/22UB/LSC/2023/0074) disputing service charges in the sum of £3,966.16 for 2022/23. The Second Applicant had similarly applied to the Tribunal in November 2023 also disputing service charges for 2022/23, but for a sum totalling £3,454.18. The Second Applicant is the leaseholder of Flat 3.
3. The Applicants also seek orders: (a) to limit any recovery of the Respondent's costs of the proceedings through the service charge, under

section 20C of the 1985 Act; and (b) to reduce/extinguish their liability to pay any administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

4. The Tribunal has decided to hear the applications together to enable all matters to be decided fairly and at the same time.
5. The Respondent is Assehold Limited who appears to have acquired the freehold to the Property at the start of 2021. Eagerstates Limited was appointed as the managing agents, it seems, around September 2021.
6. The relevant legal provisions are set out in the Appendix to this decision.

Background

7. Hawkley House is described as a semi-detached building accommodating 8 flats arranged over three floors, and with on-site parking. The property is said to have been built around the turn of the 20th century and was formerly used as office accommodation prior to its conversion to flats in 2019.
8. The First and Second Applicants both hold a long lease of their respective flats for a term of 125 years commencing on 29 September 2019. The leases require the landlord to provide services and the tenant to contribute towards their costs through a service charge. For Flat 3 the percentage is 11.7808% and for Flat 6 it is 11.5068 %. The specific provisions of the lease will be referred to below, where appropriate.
9. No-one requested a site inspection, and the Tribunal considered that one was neither necessary nor proportionate to the issues in dispute. Photographs of parts of the property were provided in relation to disputed items.

Directions

10. The Tribunal issued directions to the parties on 18 September 2024. They required the Respondent to disclose documents to the Applicants by 4 October 2024. In particular, copies of all service charge accounts and estimates for the years in dispute (audited and certified where so required by the lease), together with all demands for payment (for service or administration charges) and details of any payments made.
11. The directions also required disclosure of buildings insurance documentation (including the policy schedules detailing the relevant cover and premium) for 2022/23. Further, a witness statement was directed by a suitable named individual on behalf of the Respondent, endorsed with a statement of truth. The witness statement was to

confirm that the individual has carried out reasonable enquiries of their insurance brokers and searches of their records to provide (i) a breakdown of prescribed information (ii) what services were provided for the income received, and (iii) any claims history taken into account.

12. The Applicants complied with the Tribunal directions by providing statements of case and compiling bundles, including the completion of Scott Schedules. When the Respondent had not complied by the prescribed date, further directions were issued on 3 December 2024 with a warning that they may be barred from further participation.
13. Mr Gurvits of Eagerstates indicated by email to the Applicants and Tribunal on 7 January 2025 that his company had not received any other Scott Schedule and could not respond to it. He did not explain the absence of any witness statement on behalf of the Respondent.
14. Final directions were issued by the Tribunal on 9 January 2025. The Procedural Judge noted that even with additional time provided, the Respondent had only attempted to reply to one of two Scott Schedules produced by the First Applicants. The Respondent was given a further period until 16 January 2025 to comply with paragraph 12 of the directions.
15. Paragraph 12 required the Respondent to complete the Scott Schedules explaining all matters relied upon. A statement was also required (if not already supplied within the comments in the schedule) setting out a response to the points made by the tenants, the relevant service/administration charge provisions in the lease, any legal submissions, any response to the section 20C/paragraph 5A applications. Copies of all relevant invoices were additionally required.
16. The Respondent added only very brief comments to the Second Applicant's Scott Schedule and to only one of the First Applicants' Schedules for 2022/23. Their Scott Schedule remained incomplete for 2020/21. No witness statement was provided. Some undated copy photographs and invoices were supplied but without a supporting statement they lack meaning.

The hearing

17. A remote hearing was held as consented to by the parties. The Applicants appeared in person. Mr Sam White, Counsel, was instructed by Mr Gurvits of Eagerstates to appear for the Respondent company.
18. At the start of the hearing, Counsel sought an adjournment on the basis that the Respondent had not seen both bundles for Flat 6. It was claimed that the bundles had not been received contrary to the Tribunal's

directions, and that it would cause prejudice to the Respondent to proceed.

19. Mr Smith explained that he had sent the bundles electronically and posted hard copies (for which he had a certificate of posting) to Eagerstates at its registered office address on 11 September 2024.
20. It was unexplained how the Respondent had been able to complete one Scott Schedule without the bundle. The Schedule was clearly copied from the First Applicants' bundle and the Respondent had inserted comments on documents contained within the bundle, i.e. quotes obtained from other suppliers for window cleaning and communal area cleaning. Further, when Mr Gurvits emailed the Tribunal on 7 January 2025, he merely stated that "we have not received any other scott schedule". The Tribunal had noted in its directions of 9 January 2025 that the bundles appear to have been sent to the Respondent just as they have been sent to the Tribunal.
21. Electronic copies of the First Applicants' two bundles were emailed to the Respondent's Counsel during the hearing and an adjournment allowed for their consideration. Having seen the bundles, Counsel persisted with the application to adjourn accepting the grounds were weak and without raising any further points.
22. The Tribunal has discretion to adjourn proceedings within Rule 6 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. In exercising its powers, it must give effect to the overriding objective within Rule 3. The Tribunal was not satisfied that the Respondent had not seen all the bundles for the reasons given above. Moreover, the Respondent was legally represented, they had now seen the papers and no prejudice was identified. It was not fair and just to the Applicants to adjourn. The application was dismissed accordingly.

Procedural matters

23. The Second Applicant's application form identified a total of £3,454.18 in dispute for the service charge year 2022/23. In the statement of case and Scott Schedule that followed, the Second Applicant added an item of "overspend" of £817.76 for the service charge year 2021/22 plus administration charges. Counsel for the Respondent opposed the Tribunal determining this item as it was not included within the application.
24. However, the Respondent had been on notice for some time that the 2021/22 "overspend" was disputed by the Second Applicant from the content of her bundle. Moreover, the Respondent had added its comments in response to this item in the Scott Schedule. There was no prejudice that could arise in the circumstances. The Tribunal therefore

exercised its case management powers within Rule 6 to direct amendment of the application to include the item of “overspend” for 2021/22 to the Second Applicant’s application. This was in line with the overriding objective to apply flexibility in the proceedings and to avoid re-submission of a fresh application.

25. Having been mindful of the Tribunal’s instruction to avoid duplication, the Second Applicant had not specified the actual items or individual amounts in dispute for 2022/23, aside from internal decoration charges. The Second Applicant confirmed that she disputed the same items as the First Applicants. Counsel for the Respondent reasonably and sensibly took no issue with this, accepting that the same items should be treated as being in dispute to avoid an unnecessary repeat application.
26. The Tribunal noted that the Second Applicant had included some material concerning the service charge year 2023/24. This is outside the years in dispute. As such, the Tribunal has disregarded those references.

The issues

27. At the start of the hearing the relevant issues for determination were identified as follows:
 - whether any costs said to have been incurred by a previous landlord/managing agent are payable to the Respondent;
 - whether the relevant costs are payable by the leaseholders under their leases;
 - whether the amount of the relevant costs were reasonably incurred/ reasonable;
 - whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made; and
 - whether an order for reimbursement of application/hearing fees should be made.
28. Having heard submissions and considered all the documents provided, the Tribunal has made determinations on the various issues as below.

The lease

29. A copy of the lease for Flat 6 has been provided along with an undated and unsigned copy of the lease for Flat 3.

30. Hawkley House is described within the leases as “the Building”. The “Estate” includes the Building, and all other structures erected on the land within the registered title, as shown on the title plan a copy of which is attached to the lease.
31. The service charge year is specified to run from 1 January to 31 December in each year, or such other annual period as the landlord in his discretion determines. It was confirmed at the hearing that the service charge year is now 1 September until 31 August in the following year.
32. The “Service Charge” is defined at clause 1.1.19 as the service charge percentage of the expenses of the services and insurance. The “Services” are defined at clause 1.1.21 as the services, facilities and amenities specified in Schedule 7.
33. The tenant covenants with the landlord at clause 3.1 to observe and perform the tenant’s obligations in Schedule 5. Under the heading of “Service charge and services” at paragraph 18 of Schedule 5, the tenant must observe and perform the obligations at Schedule 7. Paragraph 2.2 of Schedule 7 requires the tenant to pay the service charge percentage of the expenses of the services and insurance for each financial year. The “financial year” is defined at paragraph 1.1 as the period commencing on 1 January in any year and ending on 31 December in the same year, or such other period as the landlord determines.
34. At clause 4.1, the landlord covenants with the tenant to observe and perform the requirements of Schedule 6. In paragraph 2.1 of Schedule 6, if the tenant pays the service charge and observes their obligations under the lease, the landlord must use reasonable endeavours to provide the Services listed in Schedule 7.
35. The “Services” are listed at paragraph 3 of Schedule 7. They include repairing, and whenever the landlord acting reasonably regards it as necessary in order to repair, replacing or renewing the Retained Parts. The “Retained Parts” means the parts of the estate other than the flat and other flats. The Services also include decorating the Retained Parts where appropriate or necessary (paragraph 3.2), placing and running maintenance contracts for the Estate (3.4), cleaning the windows and other glass of the Retained Parts, and the outside of windows and glass of the Building (including the Flat)(3.8).
36. The “Common Parts” mean the areas and amenities in the Building and on the Estate designated for use in common by the tenants and occupiers of the Building. It includes landscaped areas, entrance halls, landings, lifts, lift shafts, staircases, passages and areas designated for the keeping and collection of refuse.

37. Under paragraph 3.13 of Schedule 7 the landlord may employ such persons as, acting reasonably, it considers necessary or desirable from time to time in connection with providing any of the Services.
38. The landlord covenants with the tenant at paragraph 2 of Schedule 8 to insure the Estate. The amount of cover is set out in paragraph 3.2. At paragraph 3.3, insurance must be effected against damage or destruction by any of the Insured Risks to the extent that such insurance may ordinarily be arranged for properties such as the Estate. The “Insured Risks” are listed at clause 1.1.9 and includes “such other risks.... as the Landlord from time to time decides to insure against.”

Overspend of £817.76 & associated administration charges – 2021/2022 (Flat 3)

39. Some time was spent at the hearing attempting to identify what the sum of £817.76 entails. The Tribunal was not helped by the lack of information from the Respondent. Whilst the Second Applicant thought the sum related to the fire door and garden works, these were items raised in the following service charge year. It was Counsel’s understanding that £817.76 was the difference between estimated and actual charges. The estimated sum had been paid, but not the overspend. It was established that this was the most likely explanation.
40. Although the Second Applicant insisted the sum remained in dispute, this was inconsistent with her email to the Tribunal of 26 January 2025. After receiving the Respondent’s answers to the entries in her Scott Schedule and outstanding documents, the Second Applicant stated: *“Had this information been supplied at the time in question the quoted arrears of £817.76 would have been settled”*.
41. The lease contains provision for an overspend to be recovered (Schedule 7, paragraph 2.1.1). In light of the Second Applicant’s acknowledgment, the Tribunal finds **that the sum of £817.76 is recoverable to the extent that it relates to service charges**. The Tribunal has no jurisdiction for any part that may be ground rent.
42. The Tribunal returns to the issue of costs added to the unpaid sum when addressing disputed administration charges below.

Expenses incurred by previous management agent until takeover - £511.76 (2020/21)

43. This item is raised by the First Applicants at Flat 6. It follows a complaint made by Mr Smith against Eagerstates to the Property Ombudsman over the disputed amount of £511.76. The Ombudsman noted that Eagerstates are employed by the freeholder to collect the service charge due under the terms of their lease. The decision made clear that the Ombudsman

cannot determine disputes between a leaseholder and landlord including on the reasonableness of service charges levied.

44. The sum of £511.76 is stated by the First Applicants to be their contribution towards the £3,976.40 entry in the 2020/21 service charge accounts as “expenses incurred by previous agents until takeover”. As noted by the Ombudsman, the First Applicants’ apportionment calculated at 11.5068% would be £457.56 (rounded up). The conclusion reached was that the sum of £511.40 relates to the overspend for the year September 2020/21 that has been calculated and not just “expenses incurred by previous agent until takeover”.
45. The figure of £3,976.40 for expenses incurred by the previous managing agents was considered by the Tribunal in proceedings brought by the leaseholders of Flats 2 and 5 against Assethold Limited. In its Decision of 18 May 2022, the Tribunal found that in the absence of any documentation whatsoever from the Respondents to support their entitlement to recover costs for a period prior both to their ownership and management, they “are not recoverable and the sum of £3,976.40 should be removed from the accounts.”
46. The Respondent has evidently not removed the sum of £3,976.40 from the accounts. Its managing agents have continued to pursue these other leaseholders for a contribution towards those same costs.
47. Counsel for the Respondent was not instructed to concede the point but accepted that the previous Tribunal decision was highly persuasive and that it was not appropriate to re-make the case.
48. The sum of £3,976.40 was disallowed by the Tribunal in its decision of 18 May 2022. There is no reason for this Tribunal to come to a contrary view, particularly as there is no evidence at all in defence of the amount. For the avoidance of any doubt, **the Tribunal finds that the service charge of £511.40 is not recoverable.**

Accurate service charge 2022/23 - £3,966.16 (Flat 6)

49. The First Applicants highlighted the “huge increase” in the amount of service charges from those advised at the start of the year, and a big overspend for the building size. The Respondent had noted the comments in the Scott Schedule, but said the amount was based on expenditure. It was clarified at the hearing that the disputed sums are those that follow below, which are encompassed within the figure of £3,966.16. **No decision is required on this overall total.**

Internal decoration 2022/23 - £537.69 (Flat 6), £550.49 (Flat 3)

50. The section 20 consultation process was undertaken with Notice of Intent to carry out internal decoration works given to the tenants on 30 March 2023. Two estimates were obtained for the proposed works of £5,040.00 and £3,960.00, inclusive of VAT. Notice of the landlord's proposal to proceed with the cheapest estimate was given to the tenants on 8 June 2023. Eagerstates added its management fee of 15% plus VAT to the contract price for the works, amounting to £712.80. Hence, the total costs were £4,672.80 before apportionment.
51. The Applicants say the internal decoration works to communal areas were not done to an acceptable standard or at all. There was meant to be full painting and decoration of the internal communal areas with wall preparation and two coats of paint. They referred to photographs believed to have been taken on 31 July 2023, which show various flaws. Both Mr Smith and Miss Watson referred to a hole in the ceiling that had not been repaired.
52. Counsel for the Respondent highlighted that no objections were received during the section 20 consultation process. That may be so, but the complaints arise from the quality of works. Counsel accepted the work could not have been done perfectly given that 'touch-up' works followed.
53. The Applicants stated that they had not seen any works undertaken and they had not detected any smell of paint. These factors alone are not determinative. The Respondent's bundle included a series of small photographs of the hallway, stairs and landing believed to have been taken by the contractor on an unknown date. They are too small and unclear to be much assistance. The larger and clearer photographs within the First Applicants bundle show numerous scuffed areas, chipped paintwork and streaked paintwork on a bannister rail and post.
54. The Tribunal notes that the works specification was to sand down, fill cracks and make good all walls and ceilings, apply stain blocker to any water marked or stained areas, prepare the wall and ceilings for painting, apply x2 coats of emulsion to the walls and ceiling. In addition, the specification included making good and preparing woodwork for painting, the application of an undercoat and x1 topcoat. It was therefore meant to be a full painting and decorating job of the communal area.
55. Whilst the Applicants referred to a stained hall carpet, it was not an item listed within the specification for painting and decorating.
56. Mr Smith had emailed to Eagerstates on 31 July 2024 complaining that he had just returned home and there was no way the works outlined in the estimate had been undertaken and "at best they have perhaps painted the bannisters but I can't even be sure of that." In the exchange that

followed, Mr Gurvits of Eagerstates replied on 21 August 2023 to say that the account was payable regardless of the works and “Of course, the contractors will be completing the works in full”.

57. It is not enough for the Respondent to just produce invoices and supply undated photographs seemingly from the contractor without checking that the works have been done or to a reasonable standard. No-one from either the Respondent or Eagerstates provided a witness statement to give its account or to provide any clarification.
58. Provision exists within the lease for the recovery of charges for decorating the communal areas, where appropriate or necessary. From the evidence that the Tribunal has seen and heard, the internal decoration works that were undertaken were of poor quality. In the opinion of the Tribunal the service charge is not reasonable for those works and it should be reduced to one-third.
59. **The Tribunal determines that the amount payable in respect of the internal decoration is £1,557.60 before apportionment, amounting to £183.50 for Flat 3 and £179.23 for Flat 6.**

Communal area decorating touch up 2022/23 - £117.36 (Flat 6), £120.16 (Flat 3)

60. Counsel suggested that the touch up works undertaken to the communal area decoration demonstrated an attempt to resolve the Applicants' concerns. However, no justification is provided for passing on charges to the tenants for the cost of seemingly making good works that have not been undertaken to a reasonable standard. **The service charge is not reasonable and is disallowed in full.**

Call out for broken door 2022/23 - £68.35 (Flat 6), £69.98; and Front door repair 2022/23 - £179.50 (Flat 6), £183.78 (Flat 3)

61. The Applicants explained that the front door had to be fixed on three occasions in 12 months. They consider the charges to be excessive and demonstrate the works were not to a satisfactory standard given the subsequent repair required.
62. The Respondent's Counsel argued that the amounts were prima facie reasonable with reference to the invoices now produced. He submitted that they illustrated how the door required repairs out-of-hours and if the door was still causing issues there came a point where it was appropriate and proportionate to install a new lock.
63. One invoice for £594.00 (£495 plus VAT) is for an out-of-hours call out on 25 April 2023 to repair the broken door that would not open or close. Two engineers attended. The second invoice records that on

22 August 2023, a paddle handle was installed to the door to fit a more standard lock case. A new lock was fitted, and the door frame repaired at a total cost of £1,560.00 (£1,300 plus VAT).

64. It would not ordinarily be anticipated that routine door repairs of this nature would be covered by building insurance, as Miss Watson suggested, even though it is a fire door.
65. There is now evidence of the costs incurred. Taking into account the out-of-hours call out with two engineers on the first occasion and the works undertaken on the second, the charges do not appear excessive.
66. **The Tribunal determines that the amounts charged are reasonable and payable.**

Communal gardens maintenance 2022/23 - £91.41 (Flat 6), £93.59 (Flat 3)

67. The Applicants say there are no communal gardens at the property. They point out that the charges were not shown in the estimated accounts.
68. It emerged from the Respondent's production of three invoices that this item concerned weedkiller applied to external areas by a contractor. There are two invoices of £241.20 for weedkiller on 1 June 2023 and 4 July 2023 followed by a third invoice of £312.00 for "new area in car park weed removal" on 31 July 2023. The total sum is £794.40.
69. The Respondent supplied a series of small sized copy photographs of block paved areas. The photographs are undated and there is no explanation for when they were taken. On some photographs there are places where weeds, grass and moss are visible between the blockwork. It is unclear why there were three consecutive visits, or which areas were actually treated.
70. The Services for which the Applicants are liable include (at paragraph 3.11 of schedule 7) the tidying and tending of any appropriate part of the Common Parts in such manner as the landlord from time to time considers appropriate. The "Common Parts" covers areas in the Estate and includes pedestrian ways, forecourts and landscaped areas.
71. Provision within the lease therefore exists to recover maintenance charges in respect of hard landscaped areas. However, there was no explanation why weedkiller needed to be applied on three separate occasions between 1 June and 31 July 2023 and involving such a large sum. In the absence of sufficient information, the Tribunal is not satisfied that the second and third attendances were reasonably incurred or reasonable. Any issues arising since do not fall within the service charge year under consideration.

72. **The Tribunal allows the sum of £241.20 only, being £27.75 for Flat 6 and £28.42 for Flat 3.**

Repair fund 2022/23 - £230.13 (Flat 6), 235.62 (Flat 3)

73. A sum of £2,000 was anticipated in the estimated accounts for a repair fund. It was not charged in the finalised service charge account in September 2023 and so **this item was withdrawn** by the Applicants.

Quarterly window cleaning 2022/23 - £144.98 (Flat 6), £148.44 (Flat 3)

74. The Applicants consider the charges are unreasonable for the works undertaken. Miss Watson stated she worked from home and that the window cleaners attend for an average of 20 minutes per quarter. Mr Smith believed that the window cleaners used were not local and would need to travel some way.
75. Mr Smith produced 3 alternative quotes obtained via an online price comparison site. One quote is simply an email from an individual with a price and few details and for this reason it is disregarded. Two businesses undertook a site visit and provided quotes on letter heading with their details and particulars of the works. One is for £210.00 plus VAT per quarter (£1,008 per annum). The other is for £780 per annum (no VAT).
76. The Services for which the tenant is liable to pay the service charge percentage within the lease includes (at paragraph 3.8 of Schedule 7) cleaning the windows and other glass of the Retained Parts, and the outside of windows and glass of the Building (including the Flat). Contractual provision therefore exists to recover the charges.
77. Whilst there is no obligation to find or accept the cheapest quote, the Respondent did not provide any evidence to support the sums charged. There were no invoices or details to explain the level of charges or how the window cleaners were selected, for instance.
78. The fact that cheaper quotes can be obtained does not mean that the sums are unreasonable, but in the experience of the Tribunal there has been an over-charge. It is noted that the alternative quotes were sourced through an online site. Nevertheless, there had been a site visit and the figure of £1,008 per annum quoted by one company (and the highest of the 3 alternatives) is commensurate with the amount that the Tribunal considers reasonable.
79. **The sum of £1,008.00 is allowed for quarterly window cleaning, being £115.99 for Flat 6 and £118.75 for Flat 3.**

Common parts cleaning 2022/23 - £184.02 (Flat 6), £188.41 (Flat 3)

80. The total amount for common parts cleaning was £1,599.29 before apportionment between tenants.
81. An email from an individual with an alternative quote of £720 per annum for fortnightly cleaning was provided by the Applicants from an online price comparison site. The Tribunal disregards this single quote as unparticularised. In any event, it emerged that the point in issue is whether the works were actually undertaken or to a reasonable standard.
82. Whereas Eagerstates informs the tenants when window cleaning will be undertaken, the Tribunal heard that no prior notification is given for the cleaning of communal parts. Mr Smith thought that the cleaning was undertaken for 2 hours, fortnightly, if that. Miss Watson had never seen or heard anyone cleaning nor spotted any signs of it having been done. She referred to vacuuming the communal hallway herself. There is no checklist on display of tasks completed to show when cleaning took place.
83. Again, in the absence of any witness statement there is no information supplied by the Respondent to assist the Tribunal. Of course, it does not automatically mean that cleaning was not undertaken simply because cleaners were not seen at times when tenants may not be at home. However, on the information before the Tribunal we are not satisfied that the cleaning was done or to a reasonable standard. A 50% deduction should be made accordingly.
84. **The Tribunal finds that the amount payable for common parts cleaning is £92.01 for Flat 6 and £94.21 for Flat 3.**

Insurance and brokers fee 2022/23 - £691.92 (Flat 6),

85. Despite the Tribunal's clear directions of 18 September 2024, the Respondent failed to produce a witness statement with the required insurance information. Instead, the Respondent merely provided a short extract of the Insurance schedules. Their Counsel acknowledged that the documents do not assist with alternative rates or how the tender was undertaken. It was submitted that the documents do show that insurance was taken out with a mainstream, reputable insurer and charged at the correct date. Counsel referred to the wider economic picture with price rises on any matter of things including significant increases in insurance, which are "out of the landlord's hands".
86. Mr Smith expressed shock at the increase in insurance from that estimated. Whilst he appreciated the economic situation had changed, the building had not.

87. There were no details on how the insurance was brokered and when it was last market tested. Nonetheless, the limited documentation shows that insurance was effected for Hawkley House from 1 January 2023 to 31 December 2023 and the total premium payable was £5,963.20. This was a large increase on the estimated sum of £2,871.44 for insurance and broker's fee for 2022/23. The Tribunal recognises that the economic climate gave rise to steep increases in premiums.
88. The Applicants had not obtained any like for like quotes, or at all, for comparison purposes. The Respondent was responsible for insuring the Estate under the lease, and the cost is recoverable from tenants through the service charge. In the circumstances, the insurance sum is allowed.
89. No evidence is supplied of brokers charges to support the combined total of £6,013.20. Accordingly, the Tribunal determines that **the amount allowed for insurance and broker's fee is £5,963.20. The service charge payable for Flat 6 is therefore £686.17 and £702.51 for Flat 3.**

Administration fees

90. As set out at paragraph (6) of the Tribunal's directions of 18 September 2024, all the Applicants are concerned about administration charges in relation to the relevant periods of service charges. Therefore, their applications are treated as applications to determine payability of any relevant administration charges under Schedule 11 to the 2002 Act.
91. For the purposes of paragraph 1 of Schedule 11, an "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent. It includes sums payable, directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord, or in connection with a breach (or alleged breach) of a covenant or condition in their lease.
92. Pursuant to paragraph 2 to Schedule 11, a variable administration charge is payable only to the extent that the amount of the charge is reasonable.
93. Counsel for the Respondent identified paragraphs 14.3 and 14.4 of Schedule 5 to the lease as the basis for Eagerstates to have added its costs to unpaid service charges. Paragraph 14.3 allows the landlord to recover their costs and charges for "other" sums besides rent due under the lease. Paragraph 14.4 also allows for any other steps in contemplation or connection with the enforcement of the tenant's obligations under the lease. There are no fixed costs specified.
94. Regrettably, the Respondent failed to provide details of administration charges passed on to the Applicants, as directed by the Tribunal.

95. The Tribunal notes that it has been extraordinarily difficult for the Applicants to obtain information from Eagerstates. Responses within the bundles illustrate that replies have been brief, dismissive and repeatedly refer to the sums shown in the accounts without elaboration.
96. If well managed, it should be possible for tenants to see what has been charged and why with reasonable questions answered in a timely manner. Quite simply, that has not happened. Actual expenditure far exceeded the estimated accounts and it was reasonable for the Applicants to seek clarification. The Applicants had also raised concerns over matters such as internal decoration, garden maintenance, and cleaning, which warranted explanation.
97. It is only recently during these proceedings that the Second Applicant obtained answers sought in relation to the “overspend” of £817.76 for 2021/22. In the meantime, Eagerstates’ ‘costs’ have been continually added for unpaid charges with costs of £120 added with each letter. These add-ons would constitute variable administration charges.
98. It is wholly unreasonable for the Respondent’s managing agent to fail to provide information in response to reasonable requests and to then charge the tenant with ever escalating administration charges for non-payment.
99. Even though the Tribunal has allowed a limited number of service charges in full, it is only through these proceedings that the Respondent has eventually supplied some information for those determinations to be made.
100. **The Tribunal determines that administration charges levied in relation to the service charges for 2021/22 and 2022/23 identified in these proceedings are not reasonable or payable.**

Application under section 20C, paragraph 5A and refund of fees

101. The Applicants made an application for a refund of the fees that were paid in respect of the applications and hearing. Fee orders are entirely discretionary. Counsel for the Respondent submitted that the Tribunal’s decision on fees should reflect its finding and there was only a case to make an order if the Applicants succeeded. The Applicants say that the application and hearing could have been avoided had there been better co-operation and information from the Respondent/Eagerstates.
102. The Applicants have not comprehensively succeeded, but the Tribunal has found in their favour on many of the charges. Notably, the Respondent defended charges on the barest of information. Where completed, the Scott Schedules contained scant reasons. There was no witness statement or the production of all relevant service charge

accounts, estimates and all demands for payment, nor was there a proper response in relation to insurance. No representative attended the hearing from either the Respondent company or managing agents and Counsel had limited instructions. It is perhaps striking how little co-operation and assistance the Respondent has given the Tribunal. This corresponds with the Applicants complaints of difficulties in securing relevant information that ultimately led to these proceedings.

103. In all the circumstances, the Tribunal has decided to exercise its discretion to order the recovery of the Applicants fees in full. An order shall be made in favour of the First Applicants for £310, made up of two application fees of £100 and half the combined hearing fee (£220 in total). The Respondent shall be ordered to pay the Second Applicant £210, being £100 application fee and £110 for 50% of the hearing fee.
104. The Applicants applied for an order under both section 20C of the 1985 Act, and paragraph 5A of Schedule 11 to the 2002 Act. Having taking into account the determinations above and submissions from the parties, the Tribunal determines that it is just and equitable in the circumstances for orders 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, and under paragraph 5A of Schedule 11 to the 2002 Act to extinguish the Applicants' liability to pay an administration charge in respect of litigation costs incurred in these proceedings.

Name: **Judge K. Seward**

Date: 21 February 2025

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

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