



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

Tribunal Case Ref.	: HAV/21UC/LSC/2024/0618/BS
Property	: The Church, 16 Ceylon Place, Eastbourne, East Sussex, BN21 3JF
Applicants	: Joe Norris – Flat 5 Regina Burattin – Flat 6 Jeremy Stephen Malies – Flat 8 Jacob Hewitt and Josie Hughes – Flat 9
Representative	: Christopher Wilkins
Respondent	: Maxiwood Limited
Representative	: Noah Gifford of counsel instructed by Coole Bevis Solicitors
Type of Application	: Application to determine payable service charges—section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	: Judge J Dobson Mr A Crawford MRICS Mr E Shaylor MCIOH
Date and venue of hearing	: 16 th and 17 th December 2025, Town Hall, Bexhill on Sea
Date of Decision	: 20 th February 2026

DECISION

Summary of the Decision

1. The Tribunal determines the disputed service costs for the service charge years 2021- 2022, 2022- 2023 and 2023- 2024 are reasonable save as follows:

2021-2022

- i) £2,511.00 in respect of 2023- 2024. invoice from Harper Stone, reduced to £2008.80

2022- 2023

- ii) Invoice £576.00 from Mr Cherry Picker dated 22nd September 2022, reduced to £288.00
- iii) City Pest Control invoice November 2022 for £2,600.00, reduced to £1950.00
- iv) £168.00 from Diamond Maintenance Solutions invoice dated 1st December 2022, reduced to £nil
- v) £2,733.76 invoice from Harper Stone, reduced to £2,187.01

2023- 2024

- vi) £2,922.78 invoice from Harper Stone, reduced to £2,338.22.

2. The reductions in service charges payable by each of the Applicants in the Decision reflecting their individual shares of the above reductions in costs expended are as follows, on the understanding that only sums for 2023- 2024 were payable by the current lessee of Flat 6:

2021- 2022

- i) Flat 5- £45.20
- ii) Flat 8- £69.05
- iii) Flat 9- £69.05

2022-2023

- iv) Flat 5- £148.75
- v) Flat 8- £227.26
- vi) Flat 9- £227.26

2023- 2024

- vii) Flat 5- £52.61
- viii) Flat 6- £52.61
- ix) Flat 8- £80.38
- x) Flat 9- £80.38

3. **The Tribunal refuses the Applicants' applications pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002.**
4. **The Applicants shall bear the fees in respect of this application.**
5. **Directions are given in respect of the Respondent's application for wasted costs in respect of the hearing on 31st October 2025.**

The Background

6. The Respondent is the freeholder of The Church, 16 Ceylon Place, Eastbourne, East Sussex, BN21 3JF ("the Property"). The director, or main director, is Philip Brotherton. The Applicants are the lessees of the specific flats indicated above.
7. The Property is, as the name suggests, a former church said to have been first built around or about 1880. The Property was converted in or about 2004/ 2005 into a residential building, now containing 9 flats. The Property retains the features, or at least notable ones of them, of the original church/ chapel, including two spires, bell tower and stained- glass windows. The walls are solid. The nature of the Property is very relevant.
8. The leases were granted in early to mid- 2006 or thereabouts. The Respondent bought the freehold in December 2006, following those grants.
9. The Respondent employs a managing agent to manage the Property, Harper Stone Limited. The director or main director as asserted by the Applicants of Harper Stone is Christopher Brotherton, who the Tribunal was told in the documents- and appeared common ground- is the son of Philip Brotherton.
10. The Tribunal understands that Ms Burattin obtained the lease of her flat during the 2023- 2024 service charge year and is liable for the service charges for that year (although on account sums may have been paid by the previous owner for any relevant part of the year). However, it is not clear that she has an interest in service charges in respect of previous years at least on the information identified by the Tribunal. If that is not correct, her service charges should be reduced by the share for her flat of the reductions to expenditure the Tribunal has made.

The Application and history of the case

11. The Applicants sought determination of service charges for the years 2018 to 2024 inclusive (the last year of which was not complete and so there were no finalised service charges) by a detailed application dated 7th October 2024 [3- 33] pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"). Various elements of the charges for each year were disputed, some for each year and some for only specific years. It merits identifying that the figures given by the Applicants in the application form were figures

for the cost incurred by the Respondent rather than the sums payable either individually or collectively by the Applicants. The challenges identified in the application form were amended somewhat by the Applicants' subsequent statement of case [44-] and Scott Schedule [219- 253].

12. The Applicants also made an application for an order under section 20C of the Act that the costs of the proceedings should not be recoverable by the Applicant as service charges and an application pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the title of which will continue to be used in full), for an order that the liability to pay an administration charge in respect of contractual litigation costs be reduced or extinguished.
13. Directions dated 2nd May 2025 (not provided in the bundle but obtained separately) notably limited the scope of the application to the service charge years 2021/ 2022 until 2023/ 2024. Otherwise, directions were given in broadly usual terms and the final hearing was listed on 31st October 2025.
14. Unfortunately, neither party had provided a full case and, in the absence of the Tribunal striking out the Applicants' case as sought on behalf of the Respondent, both sides' preference was for the hearing to be adjourned, which was the approach taken. Further Directions [33- 43] were given. Those included providing for the Applicant to produce a bundle of documents relied on by the parties in relation to the issues for determination. The Applicant produced a PDF bundle amounting to 660 pages in advance of the final hearing. The Directions also include detailed reasons for the approach taken and the extent of the parties' cases at that point, but those matters do not require repeating here.
15. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [], and with reference to PDF bundle page- numbering.
16. This is an imperfect, although as good as any, time to record that the Tribunal has been mindful of the guidance of the Senior President of Tribunals to seek to keep decisions relatively short. Given the number of challenges made and the number of service charge years involved, the Tribunal has been unable to achieve that. The Tribunal finds it necessary to provide its findings and reasoning on the multiple issues and it has taken some pages for the Tribunal to be able to do so. The Decision nevertheless seeks to focus solely on the key issues. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues remaining in these applications and those are not mentioned, much as there are other matters which may be relevant in other circumstances. The Decision is made on the basis of the evidence and arguments the parties presented, save where

clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

The Lease

17. The lease (“the Lease”) of Flat 9 was provided [619- 644]. The term of the Lease is 99 years from 25th March 2006 (surprisingly short given the date of the Lease, although that it not directly relevant to the issues in this case, there being plenty of the term remaining). The Property as termed in this Decisions is described as “the Development” and “the block of flats”, the former in respect of the land and the latter in respect of the physical building.
18. The Tribunal was told that the other leases of flats in the Property are identical and that the shares of costs payable by each flat as service charges are the same. The demise to the lessee includes windows, window frames, doors, door frames, internal walls and the internal surfaces of main walls, ceilings and floors. The provisions of the Lease are unremarkable.
19. By clause 1.2, the lessee is required to pay the percentage of “all costs and expenses incurred in carrying out the obligations set out.....together with and including the costs of administration and management of the services provided.....” and towards a reserve fund. Also, by clause 1.3, the percentage of the sums expended on insurance. Clause 4.2 deals with payments on account and the remainder of the service charge mechanism amongst other matters related to lessee obligations.
20. Clause 5 lists the Respondent’s obligations, including maintaining insurance. The Respondent also covenants to and provide various services, most notably for these purposes in relation to “maintenance repair and renewal of all things used or enjoyed in common” and specific example are given such as “The roofs gutters pipes and other things for conveying rainwater from the Development”, common parts and the structure and foundations. Managing agents, accountants and other agents are able to be instructed.
21. The percentage of service costs payable by the lessees of Flat 9 as service charges is 13.75%.

The relevant Law related to service charges

22. Essentially, pursuant to section 18 of the Act, the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor’s costs of management, under the terms of the Lease. The Tribunal has jurisdiction where the whole or part varies or may vary according to the costs incurred.
23. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. That includes whether any service charge is

payable both in respect of the particular expense and generally pursuant to the provisions of the Lease and the wider law.

24. Section 19 provides that a service cost is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the costs which gives rise to the service charges. Assuming service charges to be payable in principle, the Tribunal determines the amount of the service charges payable by a given lessee in respect of the service cost.
25. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
26. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: “Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.”
27. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute, and none were referred to by the parties. The Tribunal does not therefore seek to refer to any specifically. The Tribunal is however aware of the case authorities and applies the principles identified.
28. Those include by way of examples and without in any way suggesting what follows is comprehensive, that there are two elements to whether a cost is reasonably incurred, namely was the decision-making process reasonable and is the sum to be charged reasonable in light of the evidence; whether proposed method is a reasonable one in all the circumstances, even if other reasonable courses could be adopted and other reasonable decisions could have been made; the fact that the costs of the work will be borne by the lessees is part of the context and interests of the lessees must be conscientiously considered and given the weight due, although the lessees have no veto and are not entitled to insist on the cheapest possible means of fulfilling the landlord’s objective or a minimum standard; any significant increase to costs in previous years and the financial impact on the tenants are relevant to the question of whether costs have been reasonably incurred; the allowance or otherwise of service charges is not an all or nothing decision, rather if the specific cost incurred is not a reasonable one for service or works, the Tribunal should determine the level of cost that is. Mr Gifford cited authorities regarding all or most of the above and added a point that if the Tribunal thought the works/services were done to a less than reasonable standard, the Tribunal ought to make a fair and reasonable

deduction to reflect that per *Yorkbrook Investment Ltd v Batten* [1985] 2 EGLR 1000.

29. In addition- and as highlighted by Mr Gifford in his written document, the lessee must provide what is referred to as a prima facie case in respect of any challenge brought. That is in effect sufficient that the Tribunal could find the cost unreasonable and the related service charge not payable unless the freeholder can demonstrate its reasonableness. Mr Gifford referred specifically to *Regent Management Limited v Jones* [2010] UKUT 369 (LC) and *Yorkbrook* again, although other authorities make the same point. Mr Wilkins cited *Schilling v Canary Riverside Development Limited* LRX/26/2005 and that is one such.
30. There are also authorities in respect of lease construction, but nothing turns on any disputed construction in this case.

The Hearing

31. The hearing was conducted at The Town Hall in Bexhill on Sea in person across the two days of 16th and 17th December 2025.
32. The Applicants were represented by Mr Wilkins. The Respondent was represented by Mr Gifford. Mr Wilkins provided a Skeleton Argument which was skeletal and ran to 3 pages. That of Mr Gifford at 16 pages was significantly closer to a written submission.
33. Mr Hewitt was in attendance both days as an Applicant and as the witness for the Applicants. Ms Hughes also attended initially. The other lessees were not present. Mr Philip Brotherton, director of the Respondent, attended, together with the Respondent's witnesses Ms Caroline Burchell, Ms Dahlia Brotherton (both of Harper Stone), Mr Tavis Stringer (of Geometri) and Mr Stephen Brindley for at least the first day. Ms Burchell was established to have commenced working with the Property only in October 2024 and so had no direct knowledge of matters during most of the period in dispute.
34. The Tribunal received written and oral witness evidence from those witnesses. The Tribunal then received oral closing submissions from both advocates. The Applicants additionally relied upon written witness evidence of Mr Joe Read and Mr Jason Ransom, but they were not in attendance and so could not be cross examined. Mr Ransom had carried out a drone survey of the Property.
35. The Tribunal is grateful to all the above for their assistance with these applications.
36. The Tribunal did not inspect the Property, although it gave careful consideration to whether to do so. The Tribunal was content that the nature of the Building and any matters in respect of which there was a need for visual evidence were well demonstrated by photographs such that it was not necessary to inspect in order to determine the matters remaining for

determination- and indeed it was far from clear whether access to some areas would have been practical in any event.

37. As the challenges made by the Applicants were expressed in terms of the costs expended by the Respondent and not in terms of service charges, the Tribunal therefore requested details of the service charges. The Tribunal is grateful to the Respondent's representatives for providing those, in a supplemental bundle of 158 pages although including the flats of lessees not Applicants in these proceedings and years not falling within this Decision. The Tribunal does not need to refer to individual pages of the supplemental bundle in the event.
38. In addition, a separate set of 5 pages was provided with budgets and helpfully listed the proportions of that payable by each flat. The percentages were either 9% or 13.75%. That assisted considerably by enabling identification of the proportions payable by the Applicants- 9% for Flats 5 and 6 and 13.75% for Flats 8 and 9.
39. The other notable matter raised by the Tribunal was that Mr Stringer had given what was in effect intended to be an expert report, including expressing various opinions. Mr Stringer is a graduate surveyor but holds no level of membership of the RICS. He was not sufficiently qualified and experienced that the Tribunal considered it appropriate to regard him as being an expert witness. That said, the Tribunal considers it appropriate to record that the Tribunal was impressed with the oral evidence that Mr Stringer gave. He demonstrated a good understanding of the Property and of the relevant considerations, although much of the questioning and answers related more to the Property as a whole than the disputed service charge items.
40. Equally, Mr Gifford was correct to say that Mr Ransom, whilst he had expressed various opinions, had no identified relevant qualifications in his statement [616- 618] or original report [172- 218]. Mr Stringer had criticised the conclusions reached given the limitations of such a survey but did accept, as the Tribunal does, that there are some useful photographs. Given that and his lack of attendance, whilst the photographs were relevant and useful documents, the Tribunal gave very little weight to Mr Ransom's comments.
41. Further, the document from Mr Brindley was also described as an expert report (strictly an expert statement). Mr Brindley plainly was very experienced in his field but the permission to rely upon expert evidence extended only to a chartered surveyor.
42. For the sake of completeness, the Tribunal mentions that there was reference to other proceedings in the County Court between a different lessee and the freeholder, but it was established that those were settled without the Court making any findings of fact and so there are no relevant findings by which the Tribunal might otherwise have been constrained.

Consideration of the Disputed Service Charge Issues

43. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the matters below.
44. The Tribunal takes the items year by year and in number order as listed in the detailed Scott Schedule, save for a further general item separately identified. Although the Applicants' statement of case identifies four wide areas of challenge before other specific ones, with the one exception those are also the subject of or are intertwined with specific item numbers in the Schedule.
45. Where there were matters referred to in the application form which have not then been addressed in the schedule or other case documents since, the Tribunal understands that those are not pursued by the Applicants. In any event, they would have failed to demonstrate why their case should succeed given the lack of supporting arguments and evidence.
46. Given the point made above that the challenges as expressed are to the service cost as a whole and that those sums are payable by the lessees of the 9 flats each in their individual shares, and further that the lessees of 4 flats are not the Applicants, it necessarily follows that where any service costs are reduced, the amount of the reduction reduces the service charge for the flat owned by each individual Applicant or joint Applicants to the extent of the share payable in respect of that flat.
47. Where the Tribunal sets out its decision and reasoning on an aspect of the case and the service charges payable in respect of the item are unchanged, the Tribunal does not repeat each time that no reduction was made in the service costs and the service charges are payable in respect of the item on each occasion. To do so would involve repeating the same words or finding slightly different forms of words to convey the same thing repeatedly. There is no benefit in that. In contrast, what the Tribunal does is to make clear that service charges in respect of specific items are reduced where they are and to identify the reduction in the individual service charge sums per flat owned by an Applicant for the given service charge year.

2021- 2022 service charge year

Challenge 1- invoice from Entacom for £524.95 16th February 2022

48. The Applicants disputed that the work had been undertaken citing the fact that the intercom housing was the same as before and suggesting there was only a temporary repair. It was also said that the panel remains faulty and temperamental.
49. The Respondent contended that the work required had been undertaken and provided photographic evidence [391] of the inside of the unit which the Tribunal understands was taken by the contractor's employee who attended the Property.

50. The Tribunal noted that the invoice [389] described the work as “Supply and fit new Entrance Panel and Amplifier”, where the Panel could be taken to describe the unit as a whole. However, equally the term “panel” could very well mean the panel inside what might be most obviously described as the box or housing and so internal. In that event, the exterior could remain unchanged.
51. On balance, the Tribunal found that the work had related to the interior and had been undertaken. The existing exterior had been replaced over that.
52. As to subsequent problems, the Tribunal considered that any number of things could have occurred in the weeks and months following the work. That could suggest an issue with the work but equally could have one of several other unrelated causes. There was no evidence that the cause had been a deficiency in the work undertaken at the time.

Challenge 2- Diamond Maintenance Solutions invoice for £456.00 [392]

53. The Applicants argued that the cost was unreasonably high for the work involved, described as make good holes in walls for decoration, check/ clear drains and clear one gutter in the courtyard. In particular, it was said that not much was required in terms of materials. It was contended that many other contractors could have undertaken the work more cheaply. In addition, and the Tribunal understands relevant to the drains and/ or gutter elements, the Applicants refer to other invoices for works in January of the year (the invoice is dated March) in respect of gutters and gullies.
54. The Tribunal accepted the Respondent’s case that there was no evidence that the cost fell outside a reasonable range of costs that the Respondent was entitled to incur- remembering that the Respondent must make a reasonable decision but that does not necessitate acceptance of the lowest quote- or there was anything else to suggest anything other than a usual transaction.
55. The Tribunal noted that the invoice was not especially high and so even without more it would have been unlikely that an alternative one would have reduced significantly the service charges payable by each of the Applicants. In addition, the Tribunal was unable to identify any deficiency in the work undertaken or other issue to prevent the cost having been reasonably incurred and being payable through the service charges.
56. The evidence demonstrates that there are various gutters, gullies and drains at the Property. It is abundantly clear that not all gutters were attended to in the course of these works but there is no indication that there was duplication of earlier work- and there is no challenge to the earlier invoices- nor that other was intended to be covered by the invoice but was undertaken.
57. Various of the following invoices also relate to gutter and rain works and it is clear that there has been build- up of materials in various of those. However, that is without that demonstrating any individual piece of work to

be inadequate, rather that there was a recurring issue affecting one or more of the several. Mr Hewitt quite reasonably conceded in relation to one particular instance of work to clear gutters that the particular gutter may have been cleared, albeit that another which had been photographed had not been.

58. There is scope for query as to the wider approach, returned to below, and including the approach to less accessible gutters. However, there is a difference between any wisdom of a more programmed approach and the reasonableness of individual invoices to address specific problems identified. The approach taken to investigating and attending to this and other specific instances of issues with particular gutters as explained by Mr Stringer was, the Tribunal accepted, appropriate taken item by item.

Challenge 3- Grayland Construction invoice 31st March 2021 [393], £288.00

59. This invoice again relates to drains, gutters and outlets. The complaint is that the job was insufficient and the cost unreasonable. It was argued that a specialist contractor ought to have been employed because there are gutters not reachable by hand from a ladder- indeed Mr Hewitt asserted most are not. The work had been to accessible ones. A point was also raised about the ownership of the company. The best point made by the Applicants was the point mentioned above that there had also been two earlier invoices, from a different contractor in relation to gutters and gullies in the January.
60. The Respondent's case was much the same as for the last item. It was said about that there is no evidence of cost of an unreasonable level and no evidence of the work undertaken and invoiced being inadequate. It is argued that the Respondent's choice of how to deal with the drains and gutters, assuming the choice is rational, is a matter for it to decide. Mr Stringer's evidence was that he had viewed the roof from a cherry picker in September 2021 and the roof slopes to which Graysand had completed works were in good condition and there was only modest dirt and debris to a gutter he checked (which the Tribunal was unclear was the same one in any event).
61. The Tribunal had some concern that photographs from October 2022 [94] to which Mr Hewitt specifically referred in evidence, showed gutters in need of attention. However, in the same manner as the previous item, it could not be identified that the gutters shown in the photographs were ones which Graysand had charged for attending to quite some months earlier or otherwise ought to have attended to in the course of undertaking the work in this invoice or that any issues with gutters attended to in the invoice had not been dealt with properly, as opposed to further matters arising afterwards. As noted above, there are various gutters and drains to this unusual building. Indeed, Mr Hewitt accepted that the photograph showed gutters not accessible by ladder which were therefore different ones. The Tribunal did not consider the fact that accessible gutters had been attended to and less accessible ones may be dealt with on a separate occasion rendered this invoice not payable.

62. This may be as good a point as any to record that the Tribunal can understand the Applicants querying a series of invoices for similar works on different occasions, However, as the Tribunal has identified elsewhere in this Decision, the nature of the Property and wider circumstances will unavoidably involve ongoing work.
63. The cost was not high and there was no evidence that the work could have been obtained at lower costs and that the Respondent should only have agreed to incur a lower cost. The Tribunal found no relevant point in the ownership of the contractor and in relation to this modest invoice.

Challenge 4- invoice from City Plumbing dated February 2022 [394] £456.00

64. The Applicants challenge both the reasonableness and the cost of the work. They again point to the work invoiced in January 2022 in respect of drainage gullies and gutters and the similar work charged in this invoice
65. The additional point made by Mr Hewitt in the application form was that he could not recall work being undertaken. The application form alleged that the job was closed without being undertaken. That was not followed up by the Applicants in subsequent documents. The Applicants additionally specifically challenge the wider approach to gutter clearance in their comments about this item, arguing for half- yearly clearance rather than reactive clearance.
66. The Respondent asserts that the work was undertaken and the outcome of it was reasonable.
67. It is unoriginal to make the statement that it is hard to prove a negative but nevertheless, the additional point would rest upon the Tribunal being persuaded that an invoice was rendered by a contractor for work that it did not actually carry out, arguably implicitly also involving fraud on behalf of that contractor, although no such allegation is made.
68. As to the more general challenge, the Tribunal refers to its comments about challenges 2 and 3, which also apply here and so are not repeated. It is right to say more particularly that the work in this item was by the same contractor as rendered the January invoices and there is only a 2 ½ week gap between invoices. The Respondent has not explained that well. For that reason, the Applicants came close to persuading the Tribunal that they had advanced sufficient reason to disallow the cost. However, they failed for the same reasons as above- whilst their query is understandable, they did not demonstrate duplication of work or deficiency in the work where the Property has various gutters and drains with recurring need for clearance and so there will be different areas requiring works.
69. The wider approach is returned to below.

2022- 2023 service charge year

Challenge 5- invoice £576.00 from Mr Cherry Picker dated 22nd September 2022 [395]

70. The first challenge by the Applicants to an item within this service charge year to consider relates to the removal of vegetation from a wall of the Property and sealing around the boiler flue. The broad summary argument is again raised that the cost was not reasonably incurred and the quality was insufficient. One argument raised is that there could have been an ongoing contract and the job have been carried out pro-actively, but the Tribunal leaves specific comment on that to the discussion about planning works.
71. The lack of previous attendance to the relevant gutter was also said to have caused damp to Mr Hewitt's flat, Flat 9 and the evidence of Mr Hewitt was that a report was made. Mr Hewitt relied upon photographs of the gutters showing plant growth, also covering a vent and so reducing ventilation. and black mould and other effects within the flat.
72. The Respondent's argument is that it has taken reasonable steps when each instance of water ingress has arisen. The Respondent's position in relation to the particular invoice was again that the work described in the invoice- removing vegetation, sealing flues and photographing the roof areas to indicate the condition of them- was undertaken and no issues arose with it. Photographs in the bundle showed the flues and the roof as photographed. The work was a reasonable step to take, it is asserted. It was also added on behalf of the Respondent that Mr Stringer was also enabled to carry out a necessary inspection of the Property.
73. The Tribunal was content that the work contracted for was appropriate, that work was undertaken in respect of the vegetation and it could not identify any lack of a reasonable standard.
74. In relation to the boiler flue, the Applicants advance a quite specific case. It is firstly said that the workman said that he was not allowed to touch the flue and that it was the responsibility of the lessees of Flat 9. Secondly, that the father of Ms Hughes, who is a builder, attended in November 2022 and sealed the boiler. It is also said that he removed plants, although whilst the Tribunal accepts that evidence, the Tribunal is not persuaded that vegetation removal was not also undertaken by the contractor.
75. The Tribunal does not consider that the Respondent has met that case about the boiler flue. The Respondent has failed to demonstrate that the work invoiced in respect of the flue was undertaken in response to the evidence advanced by the Applicants that it was not. On the balance of the evidence, the Tribunal determines that the boiler flue was not dealt with and hence the portion of the invoice which relates to that work is not payable. As to whether it was not undertaken because the cost ought to have been borne by the lessees of Flat 9 is not considered by the Tribunal to be relevant- the work does form part of the invoice and no other detail is provided.
76. That produces the need to identify the amount by which the service cost should be reduced and so there are service charges not payable. Accepting

that it is somewhat less than precise approach but in the absence of other information to enable the Tribunal to do better, the Tribunal notes there to have been two limbs to the work invoiced, that one has been accepted and undertaken and the other not, so broadly half and half as far as identifiable, and hence the Tribunal reduces the invoice by 50%.

77. The Tribunal considered carefully whether their ought to be set- off against the Flat 9 share of the cost in relation to any damages which should otherwise be for the effects of the water ingress. However, no case had been advanced of set- off in terms, and the Tribunal did not receive oral evidence and submissions at the hearing. Whilst the Tribunal is an expert one and is able to raise points it considers of relevance, it must do so with caution and care and must not in doing so unduly descend into the arena. Flat 9 also pays only a share of the invoice and so the amount involved is modest. There would additionally need to be consideration of the point at which breach arose and appropriate valuation insofar as practicable on such evidence as is available, which is some way from that ideal. In all of those circumstances, the Tribunal considers that it ought not to seek to consider the question.
78. The Tribunal pauses to comment on wider matters referred to with regard to the Property and to damp, accepting those are to an extent of a similar nature to the issue with Flat 9 but are not directly related to this item. This is not therefore the perfect time to refer to wider matters but equally there in no obviously better one.
79. Mr Stringer explained in evidence that the Property was constructed with solid walls and therefore without a cavity. Hence water can track from the outside and into the flats. Further he stated that when the Property was a church and had large open spaces that would not have caused a particular difficulty. However, that has been altered by the conversion of the Property and the creation of smaller spaces. Equally, humidity levels will have increased with the domestic usage and likely closed windows.
80. That was in part opinion evidence. That said, the Tribunal had no difficulty in accepting its likely correctness based on its own expertise. It may be that there was an argument at the time of conversion for the walls being tanked or some similar measure being taken. However, that did not occur and it can be surmised was not made a requirement by the local authority. In any event, that pre- dates the Respondent's purchase.
81. Further issues were raised about the conversion works more generally. It is explained below that those predated any involvement by the Respondent and so have no identifiable effect on the reasonableness of maintenance and similar costs or the consequent service charges.
82. Returning to the figures, the reduction in the service costs has the effect of reducing the service charges payable by each Applicant as follows:

Flat 5- £25.92
(Flat 6- £25.92- if relevant to the Applicant)
Flat 8- £39.60

Flat 9- £39.60

Challenge 6- further invoice from Mr Cherry Picker dated 2nd December 2022 [400] £220.80

83. The position of the Applicants is that this further invoice for removing “greenery” in and around the drainpipe, shown clearly on photographs, at the front of the Property and spraying could have been undertaken when the contractor attended in September 2022. The suggestion of a programme to attend to gutters, rather than a reactive approach, is again raised but again the Tribunal leaves that to its more general discussion below.
84. The Respondent’s case is that unless and until the section 20 major works are undertaken, the gutters which remain in situ are required to be maintained and this invoice reasonably relates to such work.
85. The Tribunal considers that longer term work is required. However, it also agrees with the Respondent that unless and until that can take place- including once the funds are received from the lessees- the existing condition of the Property needs to be maintained as far as practicable. It is reasonable to incur costs in seeking to achieve that.
86. The work within this invoice is to a different part of the Property to the September invoice work. There is nothing to demonstrate that it could only have been reasonable for it to have been undertaken at the same time as the other work. There is also no evidence that the cost would have been lower. The Tribunal was not persuaded that there was a basis to remove or reduce this cost or to alter the payable service charges because of it.

Challenge 7- City Pest Control Invoice [402] November 2022 £2,600.00

87. This invoice is significantly more substantial than the previous ones in respect of works and refers to bird proofing measures and bird clearance to the loft area. £750.00 related to scaffolding costs.
88. The Applicants argue that the steps taken are in consequence of the loft space having been accessible to pigeons and it is argued that should have been prevented at the time of the conversion of the Property for residential purposes or shortly after. The point forms part of the Applicants’ wider argument about defective conversion, especially in respect of the roof. Their case was also that the work was not undertaken well, leaving pigeons trapped in the loft- apparently accepted by the agents [313]- which subsequently died and led to the flats suffering from a substantial fly infestation, and then a moth infestation. The problem is said to have continued for a month.
89. The Applicants additionally argue that the cost exceeds the £250.00 limit in relation to works, the amount of the invoice divided by 9 equalling £288.88. It is mentioned that further section 20 major works include removing pigeons from the bell tower and related work but that is a different and

specific part of the Property and the Tribunal considers is not relevant to this work.

90. For the Respondent, the evidence of Mr Stringer, although expressing an opinion, is that there was not a comprehensive re-roof of the Property at the time of the development and that more likely there was a repair of elements identified at that time as requiring that repair. Planning permission was said by the Applicants to have required the roof to be “overhauled”. In effect, there has been other deterioration over time and that has allowed access. Hence a need for other repair work and removal. Mr Hewitt agreed that there was no report which identified that the roof was defective in 2005, although he still doubted that the condition had been acceptable.
91. In the Tribunal’s experience, the approach to conversion suggested by Mr Stringer is the more likely scenario, not least given the photographic evidence in the bundle which firmly indicates no complete re-roofing, even accepting the passage of time. It is not surprising to the Tribunal that in the intervening years, there has been deterioration which had subsequently required attention. There was no evidence advanced by the Applicants to demonstrate the approach taken at the time was inappropriate.
92. In any event and as touched on above, the Tribunal accepts that Respondent did not undertake the development of the Property and is not responsible for any failings there may have been in that. That is an important point given that there are other references in the case to the development of the Property and it is one of the Applicants’ broad themes.
93. As to the specific matter, there was no evidence of when any issue with pigeons first arose. The Tribunal considers that the Respondent was entitled to reach the decision that the nesting of pigeons needed to be prevented and arrange work to be undertaken. The Respondent is also correct to argue that the reason for the works being required at the time of them being undertaken is not the relevant question (although if historic neglect were proved, which it has not been, a lessee may be entitled to be compensated for effects which could be offset against service charges).
94. The Tribunal does find that the Property was subjected to a fly infestation and that those flies made their way into the flats, then followed by a moth infestation and that those infestations both arose from inadequate clearance of the pigeons, which were trapped and subsequently died. The Tribunal was persuaded that lead to flies hatching from eggs laid. The link there is less immediately obvious regarding the moths, but the Tribunal finds on balance that infestation was not simply coincidental and was linked. Generally, the Tribunal considered that the Applicants had raised sufficient issues and the Respondent had not adequately met the challenge fully.
95. The Tribunal accepted that a service had been provided but on the other hand there was also the undertaking of some works. On the one hand, there was the removal. On the other hand, there was patching up. The Tribunal did not accept Mr Gifford’s argument that the proofing works had not been building works pursuant to section 20, determining that they were. Some of

the cost, most obviously scaffolding, related to a combination of those. Overall, the Tribunal was content that the cost of elements properly describable as works did not exceed £250.00 and so did not require a consultation. The fact that work of a similar nature was also required and will in due course be undertaken to a different part of the Property is not directly relevant.

96. The Tribunal lacked the evidence to be able to put a value on the effects of the infestations for any given Applicant and so considered the appropriate reduction from the perspective of the indicated insufficient quality of the clearance work.

97. In light of that but there having been benefit in the main, the Tribunal determined that the appropriate course was to reduce the cost as payable through service charges by 25%, giving an amount allowed for this invoice of £1950.00.

98. The service charges flat by flat are therefore reduced as follows:

Flat 5 -	£58.50
(Flat 6 -	£58.50- if relevant to the Applicant)
Flat 8 -	£89.38
Flat 9 -	£89.38

Challenge 8- Diamond Maintenance [403] £216.00 dated 17th November 2022

99. The Applicants challenge this cost with regard to fitting two new spindles to a staircase and checking drain covers whilst present and contend the cost no to be reasonable. More specifically, they contend that the spindles themselves would have cost in the region of £5.00 each and suggest that a day rate has been applied to a couple of hours' worth of work. In addition, the quality of the work is criticised, the spindles being said not to be a good match to others and to not have been varnished. There is no dispute that work was undertaken.

100. The Respondent argues that the work was undertaken, it has not been shown to be at below a reasonable standard and the price was a market one.

101. The Tribunal finds that no sufficient issue has been demonstrated which ought to reduce the service cost. This is another example where the Respondent is able to select a contractor and that need not be at the cheapest cost possible, provided that the Respondent has gone about matters in a manner which is reasonable and the cost does not identifiably fall outside of a reasonable range.

102. That is not to entirely dismiss the Applicant's point about cost of materials or the time for the physical task of fitting. However, the Tribunal identifies that the materials would need to be obtained from a supplier, there has to be attendance at the site and then the work undertaken, such that the fitting time itself is only part of the whole. The Tribunal considers that the contractor and any other would price the job accordingly and there is at least

no evidence that the approach taken by the actual contractor is unusual and makes the cost challengeable.

103. As to the nature of the work, although the Tribunal accepted that the Applicants are dissatisfied with that, the invoice did not include varnishing and there was no evidence that had been requested. The spindles were not demonstrably sufficiently different to render the work of unsatisfactory standard, although the Applicant's point was not without some merit.

Challenge 9- £168.00 from Diamond Maintenance Solutions invoice dated 1st December 2022 [404]

104. The Tribunal understands that this is the item described in the original application form as "Health and Safety Works" (and where the sum was indicated to be £90.00). It will readily be identified that the service cost once split between 9 lessees is modest flat by flat but nevertheless, the Applicants challenge the cost as well as the quality.

105. The Applicants challenged the reasonableness of the cost of the contractor employed on behalf of the Respondent fixing a plank of wood to the bottom of one of the doors which was suffering from rot and had been otherwise damaged. They suggested that the plank was intended to prevent entry of rodents. There was no dispute that a repair was identified as required. However, the Applicants challenged the nature and quality of the work. In particular it was contended that a major trip hazard had been created, which Mr Hewitt firmly retained in his oral evidence. Temporary though the work may have been intended to be, it remained in place for a long period it was said- the Tribunal is not clear when that ended.

106. On behalf of the Respondent, it was argued that again that the work was of a reasonable standard and the cost was a reasonable one.

107. The Tribunal accepted that the repair was a temporary one but determined that even set against that, the cost was not reasonable at all and should be disallowed in full. The Tribunal agreed that there was an obvious hazard created and hence the attempted solution was not an appropriate one. A more appropriate resolution of the issue should have been achieved and had remained required following the works actually undertaken. The Tribunal determined that not least set against the hazard which the Tribunal agreed had been created, the lessees had received nothing of value overall.

108. The service charges flat by flat are therefore reduced as follows:

Flat 5 -	£15.12
(Flat 6-	£15.12- if relevant to the Applicant)
Flat 8 -	£23.10
Flat 9 -	£23.10

Challenge 10- further Diamond Maintenance invoice 25th August 20222 for £456.00 [405]

109. This is a further invoice from the frequently- used contractor and for a similar task to others invoiced. It was also in the same sum as other invoices in the 2021- 2022 service charge year.
110. The Applicants challenge the costs and the appropriateness of dealing with a portion of the gutters as accessible from ladders. It is said in the application form that the work not having been undertaken by City Plumbing in early 2022, the job was raised again. It is asserted that on that occasion the contractor said that the work could not be carried out and that access required scaffolding or a cherry picker. It was asserted on behalf of the Applicants that partial clearance took place in late 2023, so after the end of this service charge year, when scaffolding was erected to access a roof area.
111. The Respondent raised the arguments again of the work being reasonable, the quality satisfactory and there being a market cost.
112. It is notable that this is another invoice in relation to gutters not that long after ones discussed above. However, all that was said in relation to the previous invoices remains relevant. As to the cost, it is perhaps unsurprising that work of a similar nature to earlier work has been envisaged as involving similar time and is the same sum and there is nothing in that which demonstrates the cost to be unreasonable.
113. The Applicants' challenge fails for the same reasons as explained regarding the similar 2021- 2022 invoices, namely that they did not demonstrate duplication of work or deficiency in the work. The Tribunal was not persuaded on the evidence that this item relates to duplication of the City Plumbing invoice as opposed to separate work required in relation to gutter and drain clearance. It is repeated that there are various gutters and drains. The Tribunal is also not persuaded that there was a complete absence of work because of a lack of scaffolding or a cherry picker. Rather the Tribunal notes that the invoices is specific to covering "ladder accessible gutters and outlets". The Tribunal considers that make it adequately clear that gutters and similar which could only be accessed via scaffolding or cherry picker were not being attended to but not more than that.
114. The Tribunal had careful regard to the photographs in the bundle taken in October 2022 and mentioned already, which demonstrated the gutters shown not to be in a good condition. It is amply clear that those had not been the subject of effective, if any, work. It was not, however, demonstrated that those had been the subject of the work undertaken by Diamond and charged in the invoice. Whilst overlap was not impossible, the Applicants had not demonstrated it on the balance of probabilities.

Challenge 11- Harper Stone invoice dated 20th February 2023 £96.00 [406].

115. The invoice relates to updating information and signage. The Applicant's argument was that there ought not to be such a fee over and above the usual fees of the agents. The agent charged for management of the Property and it was asserted should not then charge an addition.

116. The Respondent relied upon the terms of the contracts with the managing agent [462- 496]. That provided that additional work was not part of “the Service” contracted for and such a matter was not included in the general fee- the basic fee as it might often be termed. The agents were able to charge separately at agreed rates. The Respondent argued that the basic fee was lower than it would otherwise have been because of the separation out of potential one- off charges, which may or may not arise. The Respondent identified the limited instance of charges under that provision- only one identified in relation to signage- and contended that the approach taken was the most cost- effective overall. As to the specific task, it was contended that the signage was necessary to achieve compliance with fire safety regulations.

117. It would have been possible for the Respondent and agent to contract in terms that matters such as the signage fee would form part of the standard fee but the Tribunal perceives that both parties would then have considered the likelihood of such signage being required from time to time and the cost of it and would have allowed for that when negotiating. The Tribunal accepted that the existence of separate fees for certain elements of work if required was a feature of the contract entered into by the Respondent and was one of number of approaches which could be taken to calculation of fees payable where it was for the Respondent to determine the approach to take. The Tribunal found the undertaking of the task appropriate.

118. As to whether there had in practice been any saving to the Respondent and hence to the Applicants was unclear. Nevertheless, there was nothing unreasonable about that sort of feature of the contract and nothing which gave any basis for concluding that the cost was an unreasonable one.

Challenge 12 invoice from Harper Stone 1st January 2023 [407] £540.00

119. This item relates to an out of hours fee where there are already managing agent fees.

120. Essentially, the parties’ cases were the same as the previous item and the Tribunal’s determination was the same. The Respondent relied upon the terms of the contract that out of hours contact was not included in the basic fee.

121. The Tribunal again noted that the Respondent could have entered into a contract which included, in this instance, an out of hours service within the basic fee but with the likelihood of a suitably increased sum as the basic fee. The Tribunal determined that it was not unreasonable for the Respondent to have entered into a contract which did not attempt to build that in- and so may be more expensive year by year to that extent- but rather to have agreed a separate fee as and when the need arose for work of the particular nature. It was not necessary to determine specifically whether the approach taken was the most cost- effective overall.

122. The Applicants commented in the Scott Schedule about wider issues with management fees but those are better addressed elsewhere than in this item, which relates to the particular fee.

Challenge 13 £324.00 re invoice dated 14th December 2022 from Roof Tests and Surveys Limited [408]

123. A specific argument by the Applicants related to this cost of a drone survey described as relating to a roof inspection. The Applicants referred to the other survey fees paid to Harper Stone Surveying and Geometri.

124. The Respondent's position was that given the difficulty with obtaining access to the roof, it was reasonable to instruct a drone survey to assist in assessing the condition of the roof and maintenance work required.

125. The Tribunal accepted the Applicants' general point that there had been a number of other surveys, for various stated reasons. However, the Tribunal did not identify any wide issue with that and accepted the Respondent's position in respect of this particular survey. The Tribunal was particularly mindful of the nature of the Property and the nature and height of the main roof. It was not unreasonable for a drone survey to have been considered useful and arranged.

126. The Applicants also raised a point that they had asked for the report on several occasions but only been provided with part of it in response. However, the Tribunal considers that any relevance of that would fall within the managing agent fees as a whole and not the cost of the drone survey.

Challenge 14 Report of Geometri invoice 6th July 2022 for £408.00 [409]

127. This item is said to relate to defect inspection and advice in respect of a leak into Flat 2, which is the flat identified as having been the subject of other proceedings and the lessee of which is not one of the Applicants.

128. The Applicants argued that the work may have arisen as a consequence of something not done or not done properly at the time of the conversion of the Property and been exacerbated by the lack of gutter clearance for gutters not accessible by ladder. It was also advanced that other invoices from Grayland Construction and from Harper Stone Surveying were incurred in respect of related work.

129. It was explained on behalf of the Respondent that the invoice related to investigations by Mr Stringer in relation to water ingress into Flat 2. There was no apparent dispute that such water ingress had occurred or that it ought not to be investigated. It was argued that even if the Applicant was right as to fault on the part of the Applicant, which was not accepted, the survey fee and the work involved in it remained reasonable.

130. The Tribunal re- iterates that it is not aware of the terms of the settlement reached between the Respondent and the lessee of Flat 2 but that works- and associated professional services- would in the usual course be

payable by the lessees. There was no evidence on which to conclude that the position should be different in this instance. As explained above, in the event that there was a matter which ought to have been dealt with in the course of the conversion works and was not undertaken, that pre- dated the Respondent's ownership of the Property and the leases granted in between those works and that ownership and does not affect the service charges payable.

131. The Tribunal noted the point about other invoices with regard to gutters and similar, which it has referred to above, but equally that the task of a surveyor and a contractor are generally different and there is no evidence to demonstrate duplication here. Further there was no evidence that the Harper Surveying invoice did relate to the same task. The Tribunal found no evidence the work itself falling below a reasonable standard.

132. The Tribunal concluded that the Applicants had failed to demonstrate that the instruction of the surveyor was not a reasonable approach or that the cost was not a reasonable one for the work involved.

2023- 2024 service charge year

Challenge 15- invoice for £120.00 from MW Property Maintenance dated 25th February 2024 [414]

133. This item related to a repair of a further spindle to a staircase. The Applicants dispute the cost and again refer to the cost of a spindle itself, such that the remainder relates to labour, the cost for which is said to be high. The Respondent simply argued that the Applicants failed to demonstrate that- in effect there was not even a prima facie case.

134. The Tribunal notes that there is no evidence advanced that the work was not undertaken and considers that if there was a broken spindle, it was appropriate for the Respondent to arrange the repair of it. The cost is modest and within the region of the costs which would be expected for a relatively small job but nevertheless one which needed booking in and required a contractor to attend- the comments made by the Tribunal above in respect of the work to other spindles apply. There is nothing to suggest the cost to be unreasonable.

135. The Applicants also query whether the spindle was varnished but as they cannot identify which spindle the work relates to, they appear to offer no positive case and in effect simply put the Respondent to proof. They are not able to take that approach. There is no prima facie case about varnishing of this spindle for the Respondent to reply to irrespective of anything else.

Challenges 16-25 inclusive- various individual invoices issued on several dates from Monroes Property Maintenance in various sums [427- 429 May 2023 onward and 445-451 September 2023 onward], total £10, 810. 00

136. The Tribunal takes these matters together given connections between the individual items, although not without some caution in light of the sum involved.
137. The Applicants asserted the costs to be unreasonable, although with different reasons invoice by invoice. Mr Hewitt accepted in oral evidence that the works themselves were needed.
138. The Respondent said that the various invoices all related to works to assist Mr Stringer with his investigations and to remedy the water ingress into Flat 2, the internal works being separately funded through insurance. Mr Gifford contended in his Skeleton Argument that the Applicants had not provided even a prima facie case that any related service charges were not payable.
139. The Applicants queried whether such work should be added to the service charge account given that it related to the outcome of the Court proceedings. That applies in respect of challenges 16 to 23 inclusive, although in money terms individually most significant with regard to challenge 22 in respect of the invoice dated 18th September 2023 in the sum of £3,800.00 in respect of major works to the roof above Flat 2.
140. The Tribunal is unaware of the terms of the settlement reached between the lessee of that flat and the Respondent. However, the Tribunal finds there to be no evidence that the Respondent agreed to meet the cost of the work and promised not to charge it through the service charges. In the usual course whilst it is likely that there was work within the Respondent's responsibility under the terms of the Lease, the cost is a service cost and the payment is ultimately through the service charges. There is certainly nothing demonstrating the contrary in this instance. The Applicants query the fairness of that, but it reflects the contractual provisions in the leases entered into.
141. As to the items of work, challenge 20, in relation to £350.00, related to the clearing of guttering in the lightwell. The Applicant asserted that a limited amount of guttering could be reached and so the cost of the work was unreasonably high. The argument about regular inspection and clearing as opposed to a reactive approach was also repeated but need not be commented upon further. The Applicants further identified a different invoice where the contact was said to have inspected the case of a leak and cleared a section of guttering and a hopper head.
142. Challenge 21 related to attendance to assist Mr Stringer and a loss adjuster, the Tribunal understands also in relation into the leak to Flat 2 and certain works and an invoice for £450.00. Aside from the general query about the link to Court proceedings, the only point related to cost. Challenge 23 refers to an invoice for £540.00 for the installation of a loft hatch to assist with inspection. Challenge 25 relates to an invoice for £250.00 by the contractor for inspecting damp inside Flat 2 and reporting back.

143. The Tribunal identifies that each of the invoices is for a more than modest sum and where is not clear how much work was involved. There will have been some materials required other than for item 25, for example the loft hatch and ancillary items. The Tribunal considers it possible that the work could have been undertaken for a lower price from what little it has. That said, the Applicants have done little more than raise a query and in particular have not provided any evidence of any alternative cost which might support the argument for the actual cost being unreasonable. The Applicants have not demonstrated the cost falls outside of a range the Respondent could reasonably have decided to incur.
144. A particular issue arose in relation to scaffolding. Overall, the scaffolding costs included in this series of invoices totalled £5,360.00. That is by any measure a significant service cost for 9 lessees. The scaffolding was erected to facilitate necessary investigations and works, at a starting cost of £2,150.00 but was then left up for a further period, incurring cost at £107.00 per week. The relevant challenges were 16 to 19, of which 17 to 19 related to different periods of hire.
145. Whilst the Applicants' argument in the papers focused in particular on whether it should be a relevant cost at all, as a somewhat secondary matter, the Applicants also argued that in any event the scaffolding should not have remained in situ for as long as it did. The scaffolding remain after the contractor had undertaken its work and then for quite a period. Mr Hewitt gave evidence that the work undertaken utilising the scaffolding only took 5 days- he said that he works from home and was aware- and that the scaffolding was present for 6 months overall.
146. The Respondent maintained that it had taken a reasonable approach in the expectation of undertaking the section 20 works and until it became apparent that the works would be unable to progress. Further, that it had followed professional advice in doing so. When it was apparent that the section 20 works could not progress due to finding, the scaffolding was arranged to be taken down.
147. The Tribunal again determined that there was no evidence that the work had not been undertaken, that any of it was carried out to a reasonable standard or that the cost of any element was beyond any reasonable range. The Tribunal had regard to the fact that there were the several invoices all from the same contractor but was content that each related to a distinct piece of work and it was appropriate that it was charged for and separately charged for.
148. In respect of the scaffolding, the Tribunal determined that in the particular circumstances leaving that in situ for the period was not unreasonable and so neither was the costs incurred in relation to that.
149. The Tribunal noted the distinction between the period for which Mr Hewitt said work was undertaken and the time for which the scaffolding was present. The Tribunal accepted that with the benefit of hindsight it had not achieved anything to leave the scaffolding in situ and so much of the cost

has not produced any tangible benefits. It is not wholly surprising that the Applicants have challenged the cost. The Tribunal noted that whilst there was unsurprisingly a significant cost for the scaffolding to be erected, there had also been the hire charge week on week and hence the time for which the scaffolding had been in situ had impacted significantly to the cost.

150. On the other hand, viewed from the perspective of the decision to be made by the Respondent at the time of making that decision, there was an aim of proceeding with the major works and that was logical. It would have been an odd decision to take, the Tribunal considers, to do the opposite, that is to say to take the scaffolding down. Given that the erection of scaffolding is relatively expensive- £2,150.00 in this instance- and the cost of leaving it in situ is relatively modest in comparison- at least until the period becomes lengthy- in the this instance the Tribunal determined that the approach taken by the Respondent was arguably the obvious one, at least until it became apparent that the section 20 works would not proceed as anticipated. It may have been that decision could have been taken sooner and so the ongoing hire cost reduced to an extent by that but there is no evidence on which to base any determination that the Respondent's approach ceased to be reasonable at an earlier point.
151. The next item in dispute, challenges 24 is to the "different invoice" regarding inspection of a leak mentioned above. It is said in the invoice that a section of gutter and a hopper head are cleared. The only specific argument raised relates to the reactive approach taken to gutters, which the Tribunal addresses below but where the Tribunal does not find there be unreasonableness in this specific work or related invoice.
152. It does merit identifying that when being questioned about these invoices, Mr Hewitt was specifically taken to a photograph [page 424] showing a gutter blocked with cigarette butts in particular. It identifies the flat above that area to be Flat 5. Whilst the Tribunal does not have sufficient evidence on which to make a finding and need not do so, it is at least suggested that the blockage of that gutter is a lessee- created problem, which it is obvious to state should sensibly be avoided.
153. It also merits mention that when Mr Stringer inspected Flat 2 in June 2022, he identified that there was increased damp staining as compared to his inspection in August 2021. That plainly is evidence of problems potentially not being addressed and allowing ongoing water leaking. However, on balance the Tribunal determines that there was insufficient evidence on which to reduce any earlier disputed invoice for work which may be related during the service charge years the subject of the proceedings.
154. Finally, there was reference to insurance not meeting the cost of matters said to be wear and tear as part of the works. The Tribunal simply observes that refusal to pay out for matters caused by wear and tear is standard and somewhat inevitable.

Challenges 26 and 27- Mr Cherry Picker invoice £816.00 10th January 2024 [453] and Monroes invoice 25th January 2024 for £750.00 [452]

155. The Applicants raise the same issue as with the above invoices that the cost relates to works required in consequence of the Court proceedings in respect of Flat 2 and/ or the terms of settlement of those. It is not necessary to add anything in relation to that point. The cost of the work is not queried specifically and so the Tribunal does not determine the reasonableness of that cost. There is no other argument which reaches a prima facie case and requires a determination.
156. It should be said that the Applicants also add a note at the bottom of the other comments within the Scott Schedule that the “repair has reportedly failed”. The repair in question is described as replacement of 3 storm damaged slates. However, the Applicants does not state in terms that the repair has failed, or why or with what impact. There information is apparently at best second hand. The Tribunal determines that the comment provides insufficient on which to disallow or reduce any of the invoices. Whilst not directly relevant in the circumstances, it is also unclear how it can be established that any issues arising, if any, are in consequence of a failure of this work rather than for other reasons. The Applicants have certainly not proved the specific cause.

Challenges 28 and 29- invoices from Diamond Maintenance Solutions £348.00 on 17th August 2023 [454] and

157. These two items are taken together by the Tribunal as both invoices referring to regular 6 monthly accessible gutter clearance and drain cover clearance and related works. The earlier one is described as the first such.
158. The challenge by the Applicants is that many of the gutters are not accessible by ladders and remain blocked. It is implicit that the Applicants content that the periodic inspection and clearance, which the Applicants had argued to be the appropriate approach, should be more comprehensive and involve a cherry picker or other means to access higher or otherwise less accessible gutters.
159. It is not lost on the Tribunal that the Respondent has decided to implement a programme of periodic inspection and clearance, just the approach which the Applicants argue should have been taken sooner and where the invoices considered so far have been for reactive works. It is obvious that a programme which involves the use of a cherry picker each time will be more expensive- challenge 26 in relation to the cherry picker hire involved a cost of over £800.00 and there would be additional time and cost for the maintenance contractor. It may be that if problems arising from the less accessible gutters were significant or frequent, the Respondent may conclude that such additional expense is necessary. However, the additional cost would affect the lessees and so it is not difficult to identify that there may be objection to it unless demonstrably required.

160. The Applicants have not demonstrated that the Respondent took an approach not reasonably open to it, much as the Respondent could have provided rather more. The Tribunal again identifies that it comments further below.

Challenges 30 to 33- invoices from Geometri total £3,744.00 [455- 457]

161. The Tribunal again takes this series of challenges together.

162. There are various different survey fees in different service charge years and for different purposes. Various of the surveys were undertaken by Geometri Consultants Limited as the relevant company was named during the particular service charge years the subject of this determination.

163. Before dealing with the specific sums, the Tribunal starts with the more general position of the parties. On the Applicant's part, effectively the first argument is the sheer cost of surveys over the years in question. The Applicants identify in their original application- including years no longer relevant- fees amounting to in the region £11,500.00 from the service charge years 2018- 2019 onward with two of the surveys identified as relating to separate sets of section 20 major works, in the 2019- 2020 and 2020- 2021 years.

164. The Respondent's argument about that could be summarised as being that the Property is a difficult one, that works have been and are required and that the surveys are each for an appropriate purpose and with fees of a reasonable level for the task involved.

165. The Tribunal specifically considered the connection between Harper Stone and Geometri Consultants Limited. Further, the connection between the freeholder and Geometri. Mr Philip Brotherton is a director of Maxiwood Limited: Mr Christopher Brotherton he is a director of Harper Stone and of Geometri. The latter is the son of the former. It follows that the same family is likely to benefit from profit made by each of those 3 companies and the same person the profit of the last 2 companies. That at least does not provide a strong incentive to reduce fees which will fall to be paid by third parties.

166. It had been explained in the statement of Mr Stringer that both Harper Stone and Geometri are part of the same "umbrella group", the TriBeCa group. However, it was established matters went beyond that. The two companies also share the same office and both Mr Mike Percival MRICS and Mr Stringer were previously part of Harper Stone Surveying, as what is now Geometri was formerly known. Geometri is, as Mr Stringer explained, a (limited) breakaway from Harper Stone in April 2023, enabling work to also be undertaken for other managing agents and similar. However, without ceasing to undertake the relevant work for Harper Stone. It is understandable that a person being presented with costs of Geometri may wish there to be careful scrutiny.

167. However, the Respondent is correct to say that, unless there is a sham, there is no bar on companies being related. The Respondent cited specific caselaw of *Country Trade Limited -v- Noakes* [2011] UKUT 407 (LC) and approval of the judgment on the point in *Skilleter -v- Charles* [1991] 24 HLR 421. The Tribunal is aware of the point, which the Applicants did not challenge. The Applicants would have needed to demonstrate the contrary, or excess instructions or otherwise excess cost. In practice, the Applicants advanced the argument but did not demonstrate any basis for it.
168. As to the specific invoices and numbered challenges, the Applicants argued that the inspections and advice- challenge 31 (£744.00)- and specification- challenge 32- were not reasonable items of work on the basis of contended historic neglect by the Respondent. Insofar as that related to the original conversion, it fails for the reasons expressed above about that conversion. The Respondent identifies that the work was undertaken, that there is for example the specification prepared in the bundle [430- 441].
169. In relation to challenges 32 and 33, whilst the amount of each invoice is the same- £1,200.00- the items of work are identifiably different and undertaken some 6 months apart from each other. The first is said to relate to a planned maintenance programme, which Mr Stringer said was prepared in 2023 and there having not, as far as he could say, been such previously. The latter is for a specification for works to the west elevation. The Applicants' only specific point is that they perceive the items are not included in a transaction list and they query why the items are not within the section 20 works.
170. The Applicants provided no evidence that the fees charged by Geometri fell outside of the reasonable range of fees which the freeholder could incur, or indeed that any lower fees could have been achieved at all, no alternative costings having been provided. Further, the Applicants did not demonstrate that work was undertaken by Geometri which it was not reasonable to have undertaken. Whilst the relationship between the companies could have led to over- instruction as well as additional cost, there was no evidence that it did so.
171. The Tribunal is content that each of the surveys was reasonable for the purpose it was commissioned and the planned maintenance programme was considered by the Tribunal particularly sensible given the nature of the Property. The Tribunal considers that there is a strong argument such a programme ought to have been devised earlier, although the effect of that on specific expenses has not been demonstrated. In general, the Tribunal formed the impression that identification and what might loosely be called management of works have improved since the formation of Geometri. In addition, and significantly, there was no evidence that any had been undertaken at excess cost for the particular work involved.
172. The Tribunal noted the Applicants' wide point that there has been a number of sets of water ingress but given the various features of the Property- and continuing the theme of other observations and determinations above, the Tribunal was unable to identify any assistance

that provided the Applicants whether regarding these fees or generally. It was not apparent that any reflected any failure with specific works or inspections and reports. The Tribunal accepted the evidence of Mr Stringer that features of the unique solid-walled Property make it virtually impossible to stop any water penetration.

173. It is right to say that aside from the nature of the relationship between the companies, the Respondent did not provide much either. It might have failed to demonstrate reasonableness if there had been a sufficient challenge to meet. In the event, that situation did not arise.

All service charge years 2021-22 to 2023- 24

Challenge 34- Commonway Cleaning Contract invoices- total cost £6,385.00 [458- 460]

174. The yearly costs were £1,845.00, £2,590.00 and £1,950.00. The Applicants' case is summarised as the cost being partially unreasonable because of the level of cost.

175. With regard to this head of expenditure, the principal point advanced relates to the contended association of the cleaning company, Clear Affinity Limited, to the managing agents. That is by a chain of directorships.

176. It is identified by the Applicants that Ms Lisa Hopkins, the director of the cleaning company, is also a director of Brotherton Atlantic Limited, of which Christopher Brotherton is also a director. The Tribunal found that demonstrated some form of relationship between the two individuals and potential for that having impacted on the engagement of Clear Affinity as the cleaning company for the Property. That was sufficient for the Applicants to have raised a prima facie case, the Tribunal determined. Nevertheless, considering matters as a whole, the Tribunal determined that the Respondent had sufficiently met the challenge brought.

177. As the Respondent advanced- and there was understandably no dispute about it- the cleaning company and the managing agent company are separate legal entities.

178. The Tribunal considers that much as with the involvement of other connected companies it is understandable that the Applicants might subject the costs incurred to careful scrutiny. However, in the event there was no evidence that the cost was greater than reasonable- or indeed could have been any less at all- in particular consequence of the connection.

179. The other argument advanced in the Scott Schedule was that the Applicants disputed that a fair tender process had been undertaken. It said that prior to the proceedings Mr Jay Hide in response to a query on behalf of the Applicants stated that contracts are tendered regularly and that the cheapest quote is usually selected. It was said that Clear Affinity had been the most competitive. However, the Applicants said that when they had

asked which other companies had been contacted, there had been no response, a point repeated in oral evidence.

180. The Tribunal noted that the Applicants did not provide any evidence than the cost was much higher than it reasonably ought to be for this Property. There was simply an assertion. No alternative pricing was provided. Hence, it was not possible for the Tribunal to identify that the cost from a different company could have been any lower and still less that such reduction and any other relevant matters were sufficient that the Respondent had been shown not to have made a reasonable decision in a reasonable manner by contracting with Clear Affinity.
181. The Tribunal was also content that the cleaning cost for the other relevant years was reasonable.
182. The Tribunal noted that there was a charge for 3 hours each attendance and at first blush that appeared high. However, the Tribunal has no sense of the tasks undertaken and is mindful of the unusual nature of the Property and so the potential for this element, as with others, to necessitate greater time and/ or involve greater cost than might otherwise be required. There is also no comparator provided by the Applicants. Hence, there is no basis for any determination of the time being excessive.
183. The Applicants also raised two specific issues about cleaning in connection with the cost in the 2022- 2023 service charge year.
184. The cost of the cleaning service during this service charge year is notably greater in 2022- 2023 than the previous year. The Tribunal considers that alone amount to a prima facie that service charges may not be reasonable and created a case for the Respondent to answer. Secondly, it was suggested that a 2- hour visit cost £107.90 and that the cleaner “backfilled”, which is to say on later dates recorded attendances having taken place on earlier dates.
185. In terms of the increase in cost for the particular year, the Applicants asked to be compensated for using a company with what they asserted to be much higher than average fees. They also identified in their application form that the budget for 2024- 2025 contained an estimated figure reduced by significantly from the 2023- 2024 year.
186. The Tribunal noted that even on the most basic level, the cost per visit has increased by 25% to reach £75.00 when previously £60.00. The Respondent did not overcome that point specifically and explain that increase. The Tribunal was also cautious about the increase in cost for 2022- 2023 from the previous service charge year, which was by any appreciable percentage.
187. However, having weighed up the cases presented and with less than complete enthusiasm for the Respondent’s position, the Tribunal was unable to identify that the cost per year was not at a reasonable level taking the evidence as whole. The extent of the increase cost per visit created a

concern but in the absence of any alternative costing advanced or any evidence demonstrating charges beyond those the Respondent could reasonably decide to incur and incur, matters did not go beyond that and demonstrate an unreasonable cost.

188. As to the back-filling, the Respondent contended that the cleaner had simply forgotten to fill in dates on occasion and so had done so later. The Respondent relied upon an email from the cleaner, Ms Van Wyck [461]. It was also said that no issue arose and the cleaning had been undertaken.

189. Whilst the Applicants had raised the point about the recording of visits, there was no obvious issue identified by them about the cleaning work in itself to suggest that it was not being undertaken and undertaken to an acceptable standard. The Tribunal found the more likely situation to therefore be simply that there had indeed been a simple failure to complete the records.

Challenge 35- Harper Stone Managing Agent fees total cost of £8,167.54.

190. This challenge relates to the following individual yearly sums, namely £2,511.00 in respect of 2021- 2022, £2,733.76 in respect of 2022- 2023 and £2,922.78 in respect of 2023- 2024. The Tribunal could not identify the specific invoices within the bundle but as the costs incurred were not disputed, the Tribunal proceeds on the basis of the amounts stated.

191. There are two queries raised in the application form. The first asks how the fee are justified where it is said the agents have a small number of staff and a huge portfolio to manage. The second queries the entitlement to the fees charged in light of issues with communication. The Scott Schedule raises the more general issue of insufficient service and identifies a number of contended reasons.

192. The same general point was raised in the application in relation to the managing agent as arose in relation to survey fees, namely the connection between the agent company and the freeholder. Although that is not then pursued in the later case, the Tribunal briefly touches upon it. In essence and in the same manner as explained above, there was no evidence that the connection itself had led to costs being incurred in excess of any reasonable range.

193. There was a more general undercurrent of dissatisfaction with the managing agents and various of the Applicant's challenges, as identified above, related to how individual elements fitted together, the absence of an overall approach and to the information provided. Mr Wilkins argued strongly in closing for the lack of regular maintenance and a programme and instead a reactive approach having allowed issues to arise or continue. Mr Hewitt said in oral evidence that at least part of the reluctance of lessees to make service charge payments reflected issues with the managing agents and the Tribunal accepted that.

194. The bundle included copies of the agreement between the freeholder and the managing agent for the year 2022 (although pages were missing), 2023 and 2024. The Tribunal noted that each was a term of 1 year. Whilst each was dated 1st January 2022, there was no evidence to support any evidence being manufactured for the purpose of the proceedings and hence the Tribunal considered the most likely scenario was simply that the parties to the agreement had neglected to update the commencement date when subsequent iterations were entered into.
195. The last point as expressed in the Scott Schedule but the simplest to consider in light of the above determinations is the assertion of the use of insufficient contractors at inflated costs. It will be identified that whilst the Tribunal has identified certain specific issues with particular invoices, there is no wider point made out by the Applicants about inflated costs. This line of argument must therefore, and does, fail.
196. The first two points are very much linked. It is asserted that there has been historic neglect and mismanagement and that there has been an apparent lack of long- term planning. To a large extent the historic neglect point falls away as being founded on issues with conversion of the Property, which the Respondent did not undertake and is not responsible for.
197. The Respondent argued in broad terms that the Applicant had failed to advance a legal or factual basis for the challenge. That aside, Ms Burchell gave evidence about the general budgeting process and the response to issues arising, dealing with repairs needed when told about them.
198. The Tribunal does not consider from the evidence that the management was overall of a reasonable standard. However, the Tribunal does not consider it appropriate to endorse an assertion of mis- management as such, which may imply something more substantial.
199. The Tribunal has accepted that it was reasonable to incur costs to address the specific issues with gutters and drains when those arose. The Tribunal has accepted that dealing with specific matters reactively when they arose is not of itself an unreasonable approach in terms of those individual pieces of work. The Tribunal finds that a maintenance programme will not preclude specific issues arising in between scheduled attendances and prevent a need for notifications from lessees and individual items of work from time to time. The Tribunal is mindful that it is for the Respondent to take a reasonable approach following a reasonable process and where there will commonly be more than one such approach. In principle, both having a periodic approach and having a reactive one could fall within the range of reasonable choices.
200. The Tribunal finds that in respect of this particular distinctive and rather more difficult than average Property with its particular features, there ought to have been a clearer and planned approach sooner and a systematic one to gutter checking and clearance from much sooner than approximately Spring 2023. Those features and the consequent potential costs make it even more

important than usual to have structured approach and make reacting to each incident not enough.

201. There has come to be scheduled inspection of gutters. It is not clear how that will be able to address gutters not accessible by ladders going forward and the Tribunal determines that some consideration will need to be given to how to address those other gutters and similar. More immediately pertinently, the Tribunal certainly considers that no adequate approach was organised in the earlier part of the period in dispute or earlier. A wholly reactive approach was not appropriate and at the very least has not helped to avoid potentially avoidable effects. For example, the Tribunal accepted the Applicants' point that there was at least potential for a difference to have been made to, for example, water penetration.
202. The Tribunal determines that a solely reactive approach and the lack of any systematic one was not reasonable and marked a failing in management. For the avoidance of doubt, whilst plainly the shortfall in payment of service charges has impacted on the ability to undertake works- and would have done to a rather greater extent but for the freeholder loans- the Tribunal does not find that an answer to this issue.
203. There appears to be a more careful approach developing and the involvement of Geometri since separating into a distinct company in Spring 2023 appears to have helped matters- much as it is not wholly clear why it took that separation to achieve that and how it did so. Mr Gifford argued that Mr Hewitt conflated asserted issues with a wider scheme with the individual invoices. It will be identified that the Tribunal has, with limited exception, accepted the individual invoices, which it separates from the wider management scheme.
204. The other point made by the Applicants relates to the standard of communication and to transparency. The Respondent argued that simply a selection of emails had been provided, actually demonstrating communication from the agents to the Applicants but the Applicants were unhappy at the nature of the responses received. Mr Hewitt said that on multiple occasions there had been no response.
205. The Tribunal does not find it necessary to quote or otherwise refer to individual items of correspondence. Suffice to say that the Tribunal considers that there is partial support for the Applicant's position. Communications were not always as clear and helpful as they might have been and in instances it can be identified may have contributed to concerns on the part of the Applicants. The Tribunal accepted that there had not always been any reply. Relationships with other companies- for example the cleaning company- were not addressed and fears allayed. There could have been better communication generally to ensure all involved understood the steps required and why any which could not be undertaken at the given time. The situation may not have been transformed but could have been helped.
206. Taking those matters overall, the Tribunal considered that the management fee ought to be reduced to reflect inadequacies and to an

appropriate sum for the level of service that the Tribunal considers was provided. There is an extent to which arguably that could vary a little year by year but overall and given the limited difference in any sum involved, the Tribunal considers it most appropriate to apply the same reduction to each year.

207. The Tribunal determined that the appropriate course was to reduce the cost by 20%, so £1633.51 overall.

208. The service charges flat by flat are therefore reduced as follows:

	2021-2022	2022-2023	2023- 2024
Flat 5-	£45.20	£49.21	£52.61
Flat 6-	(£45.20)	(£49.21)	£52.61
Flat 8-	£69.05	£75.18	£80.38
Flat 9-	£69.05	£75.18	£80.38

Challenge 36- Section 20 works estimated cost of £32,236.68

209. The Respondent undertook a consultation in respect of major works under section 20 to the “central tower, brickwork & roof slope” [417-418] during 2023. The above figure is the price tendered by a contractor Mid Sussex Maintenance Limited, which is the tender accepted by the Respondent following a specification drawn up by Geometri [582- 593]. However, the section 20 works have not progressed further in the absence of funds, which the Respondent says is because the lessees have not paid the relevant service charges demanded to enable the cost of the works to be paid.

210. There are lengthy comments from the Applicants in relation to this item but perhaps the most pertinent matter is that the works have not yet been undertaken and so there is no final service charge sum. Applicants queried the condition of the Property at the time of purchase of the flats, or at least Mr Hewitt did in the original application form, contending lack of awareness about the repairs required but that is not a matter for the Tribunal. A query was also raised- akin to that raised about gutter clearance- about repairs being reactive generally rather than preventative, although there is no requirement under the lease for preventative works, they could not be undertaken unless service charges were paid to facilitate that the Tribunal considers it unlikely that in practice the lessees would agree pay for works of a preventative nature and not to address a problem actually arising given the other issues with payments. The Tribunal has explained its view about a reactive approach above, principally related to the gutters and drains. The Applicants did not in their application form dispute the need for works to the areas proposed. It was argued by Mr Hewitt that there had been previous roof repairs, although he was unable to demonstrate that those had related to the same area.

211. The Respondent emphasise that they did not undertake the conversion of the Property. It also made the point that no submissions were made by the Applicants in response to the consultation carried out, which in itself indicates that there was no dispute about the need for the works. The

Respondent contended that it had taken a reasonable approach following the advice of surveyors. The Applicants did not in terms contest that.

212. More generally, the Respondent relies on the undisputed position that the roof (and the other elements of the works) falls within its repair obligations. It argues that a logical approach has been taken, including seeking reports.
213. The Tribunal has identified above evidence given by Mr Stringer about the conversion works and subsequent deterioration, which the Tribunal has accepted, including that the conversion was not undertaken by the Respondent. There is in any event no evidence of the condition of the roof being inadequate at the time of the leases- and indeed the contracting lessees were apparently content to take those out. The Tribunal finds that over the course of the subsequent years there has been deterioration in the condition such that work is required to the roof. It should be said that the Tribunal finds the same in relation to the other aspects of the major works, although little was said about them by the parties in any event.
214. The Tribunal finds it to be agreed by the parties that works are required to the areas of the Property covered by the major works. The fact that other areas also require attention does not alter the need for these works. The Tribunal finds that the required consultation was undertaken and a reasonable decision was made to accept the tender which was accepted. There is nothing identifiable inappropriate about the intended work or cost and there is nothing which supports any part of the related estimated service charges not being payable. Those are reasonable on the information available to the Respondent.

Challenge 37- Insurance

215. The Applicants dispute the competitiveness of the insurance premiums, suggesting the premiums to be very high. It was put to Mr Hewitt and accepted that there are no alternative quotes which might demonstrate any excessive price paid.
216. A concern was expressed by the Applicants as to the relationship between the Respondent and/ or its managing agent on the one hand and the insurer on the other hand. A related point was made that the insurance premium includes a commission paid, which is said for the latest 2025 premium to be 29.138%- although it will be appreciated that specific year does not fall within these proceedings. Reference was additionally made to the Respondent itself receiving a commission from the insurer in return for claims handling. Mr Hewitt in oral evidence referred to 30% more generally as the commission level. He accepted the principal of a commission being payable in return for an agreement to handle claims. The level of commission was argued to be unreasonable and a High Court judgment, not infrequently cited to the Tribunal in such circumstances, was relied upon, namely that in *London Trocadero LLP v Picturehouse Cinemas Ltd* [2020] EWHC 2591 (Ch).

217. It was also asserted that the lessees should have a right to have input as to the choice of insurer. However, the Tribunal determines that there is no question that no such right exists. Insurance is a matter for the landlord, subject to the usual questions of appropriateness of cover and the cost being within the realms of reasonableness: the landlord should test the market.
218. A query was also raised about the works recommended in the fire risk assessment not having been undertaken.
219. Mr Wilkins in his Skeleton Argument, although at least arguably without a case on the point advanced by the Applicants to rest on argued that there was no contractual basis, or wider legal basis, for the Respondent to be able to earn commission on insurance. He suggested in closing that commissions had been undisclosed, although that had not been put to the witnesses and it was not clear was accepted. At the very least the written evidence of Mr Brindley asserted the information was available. Similarly, an argument that the insurance excess on a claim ought not to be charged to all flats. It was also identified that claims dealt with had been limited.
220. This was the matter principally dealt with on behalf of the Respondent in the evidence of Mr Brindley, who gave the first oral evidence for the Respondent. He is the broker for all the freeholder's properties. His evidence was that the cost of the insurance premium charged by the insurance company would not have reduced if there had been no commission payable- the cost incurred would have remained the same. As to the commission paid to the Respondent itself, the claims handling provided a basis for such a commission. There would not be any commission to a freeholder if it had no involvement.
221. More generally, the Respondent said that it had obtained premiums on the open market through a broker and that was appropriate. Mr Brindley gave evidence that the price was important to the Respondent, which sought the most competitive price and the best wording, following a tender process 2 months before the renewal date. The particular insurer would depend on the appetite of companies year on year. None of that was challenged.
222. The Tribunal found that the insurance premium for the Property forms only one part of the Respondent's wide portfolio insured together and for that reason the features of the Property which might otherwise produce a higher premium, accepting Mr Brindley's evidence that would be likely- do not in the event have that effect. Therefore, the approach taken in fact is likely to reduce the premium compared to the sum payable if the Property were to be insured individually and without risk spread across blocks of a more common nature.
223. The Tribunal accepts the Respondent's evidence that the commission paid by the insurance company has not altered the insurance premium. In any event, the Applicants provided no evidence that the cost of the policy had been increased. The Tribunal was cautious about there being an element of commission to the broker for the policy and the commission to the Respondent. However, the Tribunal identified that each element of

commission was paid for a specific task and that was acceptable- if there has been nothing done for receipt of the commission, the answer would have been different. The Tribunal adopts the approximately 30% amount of commission referred to by the witnesses, noting that is not at an objectionable level.

224. The wider legal position does not prevent that commission being payable. The Tribunal did not consider that the contractual provision took matters anywhere- there is simply a usual obligation to insure against various risks, nothing specific is said of relevance to commission. The Applicants are correct to say that the Lease does not specifically refer to the Applicant being able to profit from the insurance cost but determines the premium to be a genuine market one and re- iterates the points in the preceding paragraph about the premium level and basis for commission payments.
225. The Applicants did not obtain and provide any alternative quote which might have indicated the actual premium to be high and to require the Respondent to potentially go further in order to justify it. The Tribunal realises that it can be difficult for lessees to obtain a quote for a policy they cannot take out- there is no incentive for a broker or insurer to provide one- but that does not alter the evidential problem faced where lessees cannot demonstrate any potential lower premium to create even the potential for the actual one being unreasonable.
226. The Tribunal identified nothing in the other points the Applicants briefly expressed.
227. For completeness, Ms Brotherton was also questioned about that where insurance funds had paid out for work to the interior of individual flats, the sum reflecting the insurance excess had been paid through the service charges and so had cost each lessee. However, the Tribunal found that to be usual situation and determined there to be nothing which affected the payable service charges (even if both feel within the relevant period which was not wholly clear). It was also said that the claim in respect of Flat 2 had referred to “multiple perils”, producing only 1 excess.

Freeholder Loans

228. Whilst there was no specific Scott Schedule number for this matter, it arose both in the application and in the hearing and hence the Tribunal considers that it ought to be addressed. The Applicants refer to comments made by persons employed by the managing agents that the loan would serve as a means to cover unpaid service charges in the short- term, more particularly that it would cover the insurance premium and separately that it would also cover works to the Property and be refunded “to the leaseholder as soon as we collect the outstanding service charges from them”. The Tribunal identified that last comment might be taken to indicate that lessees who are paying service charges are funding loans until others pay service charges or otherwise that money is being paid to the freeholder- hence the reference to refunds to leaseholders.

229. However, the Respondent explained, including in Ms Burchell’s oral evidence, that was incorrect and demonstrated that in fact there had been a loan from the freeholder to the service charge account said to ensure sufficient funds to meet the expenditure on what was described as “core services”, for example to enable payment of the building insurance premium in 2023. That was because service charges were unpaid by lessees, resulting in the insufficient funds. There had been no loan from the service charge funds to the Respondent. The Tribunal found that to be borne out by the accounting documents, to which Mr Hewitt was also taken in cross-examination. The accounts showed no payment being made to the freeholder to lend money to it.
230. It was explained that the Respondent would be re-imbursed when service charge sums were received from a lessee facilitating that. The Tribunal noted that there were therefore accounting matters to be dealt with. The Tribunal noted that if the quoted comment substituted ‘freeholder’ for “leaseholder” it would make sense and be consistent with the documents seen. The Tribunal considers it probable that the agent’s employee was either confused or made a clerical error and more probable than that the position was something entirely different to that indicated by any documents in the bundle. The Tribunal found that the freeholder and its agent had been less clear than they usefully could have been prior to the hearing as to the loans made by the freeholder and the approach to them.
231. There was not, the Tribunal determined, any additional service charge demanded from any given lessee related to producing funds to repay any loan made by the freeholder. The budgets made no provision for any and no payment had been made. There were no service charges demanded related to the item to be determined. The questions posed by the Applicants premised on loans having been made to the Respondent did not need to be answered.
232. Consequently, there was nothing for the Tribunal to determine. There was no effect on the service charges payable. Insofar as there was any challenge to any expenditure which had led to a lessee not paying and which prompted the need for the loan, that would be a matter to determine in respect of any such specific costs and related service charges.
233. It also merits observing that the Respondent is not obliged to lend money to fill gaps in service charges recovered. Also, that it is rather inevitable consequence of payments of service charges not being made that the works and services which would have been paid for by the funds had they been received will not be undertaken, save to the extent that the freeholder decides to fund the works itself, which it is not obliged to do. That has obvious relevance to complaints by the lessees about works not having been undertaken to address certain matters- to put matters simply, if the funds are not to hand, works will not ordinarily be undertaken and so necessarily any problems which the works would have addressed will continue.

Decision in respect of disputed items

234. The effect of the above findings and determinations is that the Tribunal allows the majority of the disputed items in full. Only one small element, amounting to under £20 per flat has been disallowed entirely, in respect of the lessees who are Applicants in the proceedings. There have been percentage reductions most notably to managing agent fees and to two other expenses.
235. The effect on the service charges is to reduce the charges payable by the Applicants in each of the three relevant service charges as follows:

Service charge year 2021- 2022

- i) Flat 5- £45.20
- ii) Flat 8- £69.05
- iii) Flat 9- £69.05

Service charge year 2022-2023

- iv) Flat 5- £148.75
- v) Flat 8- £227.26
- vi) Flat 9- £227.26

Service charge year 2023- 2024

- vii) Flat 5- £52.61
- viii) Flat 6- £52.61
- ix) Flat 8- £80.38
- x) Flat 9- £80.38

Comment

236. The Tribunal is mindful that the ongoing cost may place a greater burden year on year than for a different building. That is an unavoidable feature, the Tribunal considers, of the Property being an old and distinctive building. The works subject to service charge demands to date are far from the only ones likely to be required and the cost of those works is likely to be impacted upon by the nature of the Property. Although service charges in a given year could be held not to be reasonable because of the increase on other years, that rarely means that the landlord must fund the works, rather that the service charges may need to be levied over a longer period or another solution, ideally a reserve fund is permitted, is paid into the is then utilised.
237. It was argued by Mr Ransom in his report that the Property ought to be fully re- roofed. Mr Stringer has not considered that to be necessary, arguing the felt to be functioning underneath what is an “incredibly steep roof” (although Mr Wilkins made an interesting point in closing if one lacking any specific evidence to found it upon, that it may also lead to water reaching the gutters at quite a rate with consequences if the gutters were blocked). He identified that the cost of such work may be in the region of £200,000.00- assuming no subsequent increase- and that there is some doubt about such

funds being available from the lessees who would bear the cost. Hence the identified plan is cyclical works to address matters as they arise, starting with obvious steps. Mr Hewitt is correct that repair works are likely to “go on and on as inevitably there are areas of deterioration, although at lower costs from time to time. Some matters such as gutters and drains will inevitably require ongoing attention, funds permitting, to clear them and undertake repairs. It may be that seeking to accumulate reserves towards major roof works has merit.

238. Lack of payment of service charges and consequent prevention of works being undertaken, is only likely to result in effects which should have been prevented by the works instead continuing. The nature of management of leasehold flats is that the landlord or management company is required to undertake work and provide services as required but the lessees must pay for that. It will be difficult to complain about a lack of works by the Respondent where it lacks the funding. All parties have an interest in the Property being in good condition and in avoidable problems being avoided.

Applications in respect of costs and fees

239. As referred to above, applications were made by the Applicant that any costs incurred by the Respondent in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the Applicant pursuant to section 20C(1) of the Landlord and Tenant Act 1985. In addition, an application was made pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act that the costs of the Applicant’s application should not be recoverable as administration charges.

240. On behalf of the Respondent, Mr Gifford submitted that there were no applications for consideration because the Applicants had not provided anything in response to the Directions, which had allowed for submissions about the applications. He invited the Tribunal to bar the Applicants from pursuing those applications.

241. However, and having had the opportunity to consider the situation, the Tribunal does not agree. The application form submitted in October 2024 plainly had the relevant boxes ticked to make the applications. Hence, there are applications which the Tribunal is required to consider. That said, the Applicants provided no submissions in support. There is only a ticked box on the main application form. Consequently, there is little to identify why the applications should be granted. On the other hand, there is essentially nothing from the Respondent about why the applications should not be granted, no doubt because it was considered that no comment was required.

242. The Tribunal has therefore carefully considered the position and the potential impact of the above. The Tribunal has considered whether written submissions ought to be requested. In the event, the Tribunal cannot identify anything which either party might have raised which would add to that which the Tribunal is aware of after a two- day final hearing and the preparation for that and which might have any discernible prospect of altering the outcome.

243. Section 20C (3) of the 1985 Act, provides “the ... Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances”. The Tribunal is given a wide discretion. The provisions of paragraph 5A are equivalent and for practical purposes the test to be applied to each limb of the applications that costs of the proceedings should not be recoverable is the same.
244. The provisions of section 20C were considered in *Re: SMCLLA (Freehold) Ltd's Appeal* [2014] UKUT 58, where the Upper Tribunal held that:
- “although [the First-tier Tribunal] has a wide jurisdiction to make such order as it considers just and equitable in the circumstances” (at paragraph 25), “an order under section 20C interferes with the parties’ contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances” (at paragraph 27).
245. In *Conway v Jam Factory Freehold Ltd*, [2014] 1 EGLR 111 the Deputy President Martin Rodger QC suggested that, when considering such an application under section 20C, it was:
- “essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make”.
246. One of the circumstances that may be relevant is where the landlord is a resident-owned management company with no resources apart from the service charge income but that is not relevant to the position here. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.
247. The Tribunal considers that the outcome of the substantive case is highly relevant. That is that the Applicants to the far greater extent failed in their challenges to the service charges in dispute. Only 4 items were successfully challenged of the 37 raised. If the applications were granted, the Applicants would not have to bear the costs incurred by the Respondent in the proceedings but that does not mean that they would not have been incurred. The prevention of the Applicants paying the costs would not prevent the other lessees having to contribute.
248. The Tribunal has borne in mind that the freeholder is said to own a very substantial number of other properties. The freeholder of course also chose to incur costs by being represented in an action brought in a forum in which parties are able to represent themselves and where if parties choose to instruct legal representatives, they do so taking the risk that they may well not be able to recover the cost of doing so.
249. However, taking the circumstances overall, the Tribunal does not consider that it would be just and equitable in this instance to interfere with

the Respondent's contractual right to recover legal costs of proceedings insofar as the Lease gives it such a right. The Tribunal makes no determination of any such extent nor of the reasonable amount of the costs which ought to be recoverable as service charges or administration charges, not least where none have as yet been demanded.

250. The section 20C and paragraph 5A applications are therefore refused.
251. In terms of fees for the application, the Tribunal determines that those must be borne by the Applicants.
252. The primary reason is that the Applicants very largely failed. It naturally follows that they have achieved a degree of success and that gives at least some potential for the fees to be paid by the Respondent. However, the Tribunal has determined having considered those matters and weighed the features of the cases in the round that the limited extent of the Applicants' success is far from sufficient basis for repayment of the fees to be ordered from the Respondent.
253. The Respondent sought an order pursuant to rule 13 of the Rules that the Applicants pay the Respondent's costs of the 31st October 2025 hearing. The essential basis for that was set out in the Respondent's Skeleton Argument. Mr Gifford added to that briefly in oral submissions. He asserted that the Respondent stood ready to proceed on that original final hearing date on the basis that there was no evidence save documents. He contended that the Applicant caused the adjournment. However, Mr Gifford also introduced a further element, that there was an implication of fraud on the part of the Respondent in the Applicant's case, although did not greatly expand on that.
254. Mr Wilkins identified that whilst there was no later sworn evidence, the Tribunal did have at the hearing the detailed signed application form. The Tribunal had said that the form with the supporting comments had raised a prima facie case about at least some of the issues, so the Respondent was obliged to respond. However, the Respondent had chosen not to produce evidence doing so. He contended that it was wrong to characterise the fault as solely that of the Applicant and there was no conduct so unreasonable to merit a finding of such conduct pursuant to rule 13.
255. The Tribunal has addressed the circumstances of the adjournment of the October 2025 hearing in some detail in the subsequent Directions and reminds the parties of that. They should consider the observations and determinations made.
256. Nevertheless, if the Respondent does wish to pursue its application, there ought to be an opportunity for the parties to set out their cases further in respect of the application, firstly the Respondent and then the Applicants in response, including any wider arguments beyond the October hearing. The Tribunal will then make a determination on the application if relevant.

DIRECTIONS

257. The Respondent shall provide to the Applicants and to the Tribunal any written representations on which it wishes to rely and any costs details in respect of an application under rule 13 by 6th March 2026.
258. The Applicants shall provide any reply by 20th March 2026.
259. The Tribunal will determine any contested application on the papers as soon as practicable thereafter.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.