FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/21UC/LSC/2020/0040**
Property	:	**52B, 52C, 54E & 54F Ashford Road, Eastbourne, East Sussex, BN21 3TB**
Applicants	:	**Laurence Blume** **Chris Hogben** **Lee Marriott**
Representative	:	
Respondent	:	**Joanne Smith**
Representative	:	**Mr Stephen Holt, solicitor**
Type of Application	:	**Determination of service charges: section 27A Landlord and Tenant Act 1985**
Tribunal Member	:	**Judge R Cooper** **Mr D Barnden MRICS**
Date of Hearing	:	**23rd February 2021**
Date of Decision	:	**24th May 2021**

DECISION

In summary, the service charges recoverable by the Respondent in respect of 52/54 Ashford Road, Eastbourne BN21 3TB are reduced by the following amounts for the reasons more particularly set out below:

Year	**£**
2015	**720**
2016	**8,040**
2017	**180**

2018	**2,513**
2019	**5,170**

Orders are made under s20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that the costs (if any) of these proceedings may not be recovered through the service charge or as an administration charge.

The Respondent is to pay the application and hearing fees to the Applicants.

In this decision references to the page number of the documents are referred to thus [ ].

Background

1. On 1st April 2020 the Applicants applied to the Tribunal for determination as to the liability to pay and reasonableness of service charges in respect of 52/54 Ashford Road, Eastbourne BN21 3TB ('the Property') for the years 2015 to 2020 (inclusive) under s27A Landlord and Tenant Act 1985 ('the Act). They also apply for orders that the Respondent's costs of the tribunal proceedings should not be recoverable through future service or administration charges (under section 20C of the Act ('section 20C') and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('paragraph 5A'))

2. Directions were given on 6th July 2020, and 21st and 27th August 2020 which have been complied with. Permission was given to the parties to rely on expert evidence.

3. There was no inspection of the Property.

The Issues for the Tribunal

4. The principal issue for the Tribunal to determine is whether the service charge for the Property is reasonable and payable in each of the accounting years from 2015 to 2019 inclusive, and for the future costs demanded in respect of 2020/2021. The main area of dispute concerns the work undertaken in respect of the roof at the Property, but the Applicants also raise issues with a number of other charges as set out below.

The Property

5. 52-54 Ashford Road (under Title numbers EB18648 [328] and EB16608 [330]) comprises two mid-terrace adjoining four-storey houses built between about 1870 and 1890. They are of traditional construction, and were converted into six self-contained flats/maisonettes in or around 1987. The Respondent purchased the Property in or around 2002.

6. The two basement flats, 52A and 54D, are owned by the Respondent to this application, Ms Smith. The two ground floor flats, 52B and 54E, are owned by Mr Marriot. 52C (a first and second floor maisonette) is owned by Mr Blume, and 54F (also a two floor maisonette) by Mr Hogben.

7. 52 and 54 Ashford Road each have their own separate entrance up a short flight of steps from the street. There is said to be a small passageway from the front door leading to the two internal flat doors, although no photographic evidence of this was provided. The basement flats have their own separate steps leading down from the street to individual front doors.

8. The building has painted, rendered solid masonry external walls with suspended timber floors. The roof is a concrete tiled pitched roof with small dormers to both front and rear roof slopes.

The Applicants' leases

9. The Tribunal had before it a copy of the lease for flat B 52-54 Ashford Road, which is a flat belonging to Mr Marriot, one of the Applicants. It is dated 18 July 1989 and is granted for a term of 99 years from 25 December 1987. All of the leases in the Property are said to be in the same or similar terms.

10. In summary the relevant provisions of the lease are as follows:

    (i) By clause 4(1) the lessee covenants to pay their share of the Annual Maintenance Cost ('AMC' or 'the service charge'). Each Lessee's individual share is set out in the recitals. The percentage share of the service charge for the six flats is as follows
    (a) 52A and 54D - 17%,
    (b) 52B and 54E - 12.25%
    (c) 52C and 54F - 20.5%

    (ii) The amount of the AMC is defined in clause 4(5) as '*the total of all sums actually spent by the Lessor during the period to which the relevant Annual Maintenance Account relates in connection with the Management and Maintenance of the Property'*, and sub-clauses (a) to (f) set out the basis of the charges. These include the costs of performing the Lessor's covenants in Clauses 5(2) to 5(6), and other payments including the costs of employing professionals (such as solicitors, accountants or surveyors) and other advisors in connection with those duties. It allows for the creation of a reserve fund.

    (iii) By clause 4(7) the Lessor covenants to use best endeavours to keep the Annual Maintenance Cost at the lowest reasonable figure consistent with observing and performing their obligations under the lease, but the Lessee is not entitled to challenge the AMC or object to any item of expenditure on the basis if could have been obtained more cheaply.

(iv) The obligations in Clause 5(2) to (6) require the Lessor to maintain, repair, cleanse, repaint, redecorate and renew the main structure (including the roof) and common parts of the building, and the conduits for drainage, gas, and electricity. There is an obligation to keep '*cleansed and in tidy condition*' the parts used in common by other occupiers (including the stairs, entrance and forecourt). There is an obligation to pay all rates, charges and outgoings in respect of parts of the Property used in common with others, and to keep the Property insured.

(v) The Lessees covenant to make payments on account of their share of the AMC contribution in advance on 24th June and 25th December each year (clause 4(2)), and the Lessor is required to provide a certified account as soon as possible after the 25th December. There is provision for payment of a balancing charge provision in the event of a shortfall, and for any excess to be carried forward.

The Law

11. The law relevant to this application is set out in full in the appendix to this decision.

12. Section 18(1) of the 1985 Act defines 'service charge' as 'an amount payable by a tenant … which is payable, directly or indirectly, for services … and … the whole or part of which varies or may vary according to the relevant costs'. Section 18(2) defines 'relevant costs' as 'the costs or estimated costs incurred or to be incurred by or on behalf of the landlord … in connection with the matters for which the service charge is payable.'

13. Under s27A of the 1985 Act the Tribunal has the jurisdiction to determine whether a service charge is payable and, if it is;

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

14. A service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard (s19 of the 1985 Act). When service charges are payable in advance, no more than a reasonable amount is payable.

15. Under s20C a leaseholder may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

16. A leaseholder may also apply to the Tribunal under paragraph 5A for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs".

The hearing

17. Due to the Covid 19 pandemic the hearing was held remotely by video. A face-to-face hearing was not held because it was not practicable and all issues could be fairly determined in a remote hearing. Neither party objected to this form of hearing. There were a number of technical difficulties during the course of the hearing with both the Respondent and the Judge having difficulties with either audio or video or both. Mr Barnden briefly dropped out of the hearing. However, at the conclusion of the proceedings all parties confirmed they were satisfied the hearing had been fair despite these difficulties.

18. The lead applicant, Mr Blume, represented all three applicants. He provided a witness statement and gave evidence to the Tribunal. Mr Marriot and Mr Hogben did not attend the hearing or provide witness statements.

19. The Respondent, Ms Smith, was represented by Mr Holt. Both she and her managing agent, Mr Mooney of Eastbourne Lettings, provided witness statements and gave evidence.

Discussion and conclusions

20. The Applicants in their application challenge the service charges claimed for the years 2015 to 2020 inclusive [8]. Their case is set out in application [1-22], the witness statement of Mr Blume [31] to [62] and the response to the Respondent's case [456] to [471].

21. Their principal challenge relates to the standard and costs of works to the roof. In summary, the Applicants' case is that works carried out to the roof by Rob Nichol (trading as DIY Wizard) in 2016 and by AJW Properties in 2019 were not carried out to a reasonable standard and should not be payable, because the works have been ineffective in remedying water penetration. Other costs they say, such as the cost of scaffolding erected in 2018, were not reasonably incurred. They also complain of delay on the part of the Respondent in addressing the leaks from the roof over a three-year period, which have still not been resolved. As a consequence of these issues significant damage has been caused to the fabric of the interior of their properties, with repairs

estimated to be in excess of £13,000, which will not be recoverable from insurance as the Respondent failed to make a claim promptly.

22. Additionally, the Applicants also challenge the reasonableness of the following other charges; cleaning, electricity, water, insurance, computer software, fire alarm and management fees.

23. In his witness statement, Mr Blume summarised the remedy sought by the Applicants (at [52] to [59]), which included clarification of some costs and reimbursement of service charges paid from the 2013 and 2014 service charge years in addition to 2015 to 2020. However, these earlier years were not included in the original application, and the Tribunal therefore has no jurisdiction to make a determination in respect of the 2013 and 2014 service charge years. In any event, it appears neither Mr Blume nor Mr Hogben acquired their leaseholds until 2015.

24. The Respondent's case is set out in the witness statements of Ms Smith (at [296] to [326]) and Mr Mooney (at [286] to [295]) and in the Respondent's statement of case/submissions (at [437] to [455]).

25. In summary, although the Respondent accepts the repairs carried out to date have not been entirely effective, she says she has acted reasonably throughout seeking advice and information from independent roofing contractors. She denies that the costs paid for works carried out by Rob Nichol were excessive or unreasonable, or that the works were not to a reasonable standard and AJW Building were contractors identified by the Applicants. Whilst there had been some delay this had been due to difficulties with finding contractors, s20 consultation requirements and the objections of the Applicants. The Respondent's actions had been reasonable and proportionate, and the Applicants added to delay by their failure to pay service charge contributions on time.

26. In relation to the other costs the Applicants sought to be reimbursed, they had failed to demonstrate the costs were unreasonable or not reasonably incurred.

27. It was common ground between the parties that the disputed items of roofing works and the other charges all fell within the scope of the lease and therefore were charges that could properly be applied to the Annual Maintenance Cost account. The issue for the Tribunal, therefore, solely related to the question of 'reasonableness' under s19 of the Act; namely whether the works or services had been reasonably incurred and whether the works or services charged for were to a reasonable standard.

28. The evidence before the Tribunal indicated that although there had historically been a problem with arrears of service charge payments by Mr Marriot (from June to October 2019 amounting to approximately £3,000), in the main Mr Blume and Mr Hogben had paid their share reasonably promptly albeit under protest until this application was made in summer of 2020. However, the total arrears of Annual Maintenance

cost owing by the three Applicants as at the date of hearing was just over £5,000 [257] to [263].

29. Turning to the individual areas of dispute the Tribunal makes the following determinations. Although reference is made to costs charged to the service charge from 2013, this service charge year (and 2014) were not the subject of the application, and no determination is made in respect of those years. The figures are simply provided as they have been provided in the parties' documents. As the final service charge accounts have not been provided for the years ending 2019 and 2020 these are provided as estimated figures.

Cleaning costs

30. The costs charged to the service charge account by the Respondent are as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£360	£405	£510	£600	£600	£600	£840	£0

31. The Applicants' case is that the use of a professional cleaner is unnecessary and a *'squandering of money'* that could otherwise have been used for roof repairs. Mr Blume says the costs are excessive for the size and extent of the communal area, as there is only a short hallway (10 to 12 feet) from the front door of both 52 and 54 Ashford Road leading to the internal flat doors. Vacuuming this and tidying the post onto the small tables would only take minutes. No challenge was made as regards the standard of the cleaning undertaken.

32. Although no documentation had been provided to the Tribunal, Mr Mooney said cleaning was scheduled to take place monthly and included not only the hallway, but also keeping the frontage to the property in a clean and tidy condition. This includes the steps up to the front door and down into the basement (where the bins are also stored). Ashford Road is a busy street, and there was no on street parking, so equipment had to be carried to the Property. Ms Smith confirmed that following the objections raised, she had now cancelled the cleaners and could have done so at an earlier stage had she been aware it was an issue. She said this would be kept under review given her obligations under the lease.

33. The Tribunal is satisfied that the lease requires the Respondent to *'cleanse and keep in tidy condition'* the communal parts and finds that the monthly sum of £50 (£600 p.a.) not an unreasonable charge for professional cleaning services to the communal areas of these two buildings. The Applicants have produced no evidence suggesting otherwise.

34. However, the Respondent has produced no documentary evidence to the Tribunal supporting the additional cleaning charges applied to the service charge account in 2019. Ms Smith said cleaning costs were £600

p.a. and Mr Mooney was unable to adequately explain why cleaning costs had increased to £840 in 2019 apart from to say that additional work might sometimes be invoiced onto the system if say items had been dumped at the property. This was an issue in dispute and the Tribunal expected a proper explanation to be forthcoming. In the light of this lack of evidence or audited accounts in respect of 2019, the Tribunal is not satisfied that the Respondent demonstrated that additional cleaning services were reasonably incurred.

35. The Tribunal finds the charges for 2015 to 2018 are not unreasonable, but only £600 is reasonable and payable for the 2019 service charge year.

Electricity Charges

36. The costs charged to the service charge account are as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£205	£231	£167	£207	£326	£500	£650	£300

37. Mr Blume conceded that this was not a major issue, and in the light of the other areas of dispute the Applicants had simply sought clarification given the only appliances requiring electricity were the pneumatic time delay lights, the fire alarm panel and occasional vacuum cleaning.

38. In summary, Mr Mooney's evidence is that historically there had been a problem due to the electricity companies. EDF had been the supplier for years and meter readings had been a problem with different serial numbers being used and estimated readings. He was unable to be specific but thought they had appointed a broker three years ago and now had a new supplier. It might be that in previous years not enough had been paid due to estimated readings. He confirmed an Electricity Condition Information Report had been obtained and everything was in order, but was unable to say with any certainty whether the cost of the ECIR would have been included in the electricity charges account. He did not know whether building contractors could have used the electricity supply. Ms Smith said that she had raised the issue with the managing agents because Mr Blume was unhappy about the charges, and this had now been outsourced through a broker. She considered £1 to £2 per week per flat for electricity to be reasonable.

39. Although there was no documentary evidence available to the Tribunal relating to electricity charges (save for the audited accounts for 2015 to 2018 (inclusive)), the Tribunal found it more likely than not that much of the cost may be accounted for by the standing charge, the costs were not unreasonably incurred, and bills might well vary if over several years only estimates had been used.

40. It appeared to the Tribunal the managing agents historically did not have proper systems in place for the monitoring of bills or accuracy of

metering. Mr Mooney's evidence was somewhat vague, but it seemed clear EDF had been used for quite some period without review. Standard practice would be to review suppliers regularly in what is a highly competitive market. It appears that this may now be being done through a broker.

41. The Tribunal finds the costs set out in paragraph 36 above reasonable and properly payable as service charge.

Water Charges

42. The costs charged to the service charge account are as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£1,399	£1,496	£1,126	£1,599	£1,547	£2,490	£2,075	£2,000

43. In their statement of case, the Applicants sought a proper explanation as to why the communal water rates had increased by around £1,000 for 2018 to 2020. They sought clarification as to whether there had been an overcharge that was repayable to the service charge account. Mr Blume said the increase in charges was not commensurate with the numbers of people living in the Property. Mr Marriot's two flats were unoccupied because of the condition of the buildings.

44. The Respondent's case is that the water rates are reasonable and properly chargeable and as it is a communal metered water supply the Respondent has no control over charges. Mr Mooney was unsure exactly when the meters were fitted but thought it was *'round about 2017 or* 2018', and readings taken by the contractors were *'probably estimates*' but he had been assured there were no leaks.

45. Despite the absence of documentary evidence (save for the audited accounts for 2015 to 2018) the Tribunal are satisfied on balance that the charges set out above in paragraph 42 were reasonably incurred. There was nothing indicating the communal water supply was not to a reasonable standard. However, knowing that clarification as to the reasons for the increase was sought, the Tribunal found it surprising that Mr Mooney was unable to be more specific regarding this issue.

Fire alarm

46. The costs of the fire alarm maintenance applied to the service charge account are as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£0	£5,051	£2,024	£1,020	£1,020	£1,020	£560	£650

47. The Applicants seek an explanation as to why £1,004 more was paid in 2015 than in other years for alarm maintenance and if it was an

overcharge for it to be repaid to the account. In response to Mr Holt's questions he accepted there were services and that the charges fell within the service charge liability. However, he said the services were not to a reasonable standard when the lessees were being charged for call point testing which was not carried out in 54 Ashford Road because for 6 months the company was unable to gain access. However, Mr Blume accepted that a refund of £200 had already been given for this period.

48. Although there was no supporting documentary evidence, Mr Mooney was able to provide a detailed explanation regarding the charges. The fire alarm system was installed in 2014 and there were higher charges in 2015 when there was completion of the panel and installation of sounders in the individual flats. Charges reduced in 2019 and 2020 as the weekly call point testing had been stopped, replaced by quarterly visits to test the panel.

49. On balance the Tribunal was satisfied the charges set out in paragraph 46 above were reasonable and had been reasonably incurred.

Resident Software

50. The fees charged to the service charge account are as follows

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£0	£0	£0	£0	£0	£125	£125	£125

51. Although the Applicants accept it was only a minor annual amount, they challenge the cost of a change in the managing agent's office software being passed to the leaseholders. Ms Smith and Mr Mooney in their evidence, however, clarified this was a subscription to an online portal enabling leaseholders access to information about their service charge accounts and to communicate more effectively with the freeholder and managing agent. In response, Mr Blume questioned whether access to an online portal was a worthwhile expense given the overall dispute.

52. In view of the history of this dispute, and the difficulties in communication between the parties the Tribunal finds the charges were not unreasonably incurred. The lease allows for charges in connection with the management of the Property, including management of the service charge account. Ms Smith confirmed in any event that if the leaseholders did not find it helpful, the service could be discontinued.

Management Fees

53. The fees of Eastbourne Lettings charged to the service charge account are as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£540	£720	£1,260	£540	£720	£720	£720	£742

54. The Applicants challenge the fees paid to the managing agents on the grounds that the service of Eastbourne Lettings has not been to a reasonable standard in particular in relation to the dispute regarding repairs to the roof. They have made a formal complaint and had referred the matter to the Housing and Property Ombudsman also.

55. In its statement of case the Respondent says those services have been of a reasonable standard.

56. No copy of the agency agreement has been provided in evidence but it would appear from paragraph 2 of Mr Mooney's statement that a full management service is provided, including managing maintenance and repairs at the property. Mr Mooney was, however, able to provide a detailed explanation of their charging structure. His evidence is that Eastbourne Lettings' charges were based on a fixed fee of £120 per flat (inclusive of VAT), which he said was at the lower end of the industry scale. Additionally, they charged fixed fees for extra services (such as a s20 consultation process for major works). These additional fees also included a fee of 10% plus VAT of the final price of any major works and he confirmed this too was standard industry practice. He said those additional charges fall within the ARMA guidelines and confirmed that Eastbourne Lettings were regulated by ARMA.

57. The Tribunal is satisfied that an annual fee of £100 plus VAT for a management fee per flat is not unreasonable if the management function is carried out to a reasonable standard. However, when looking at the evidence in the round the Tribunal finds that Eastbourne Lettings have not always provided a service of a reasonable standard of management. Nor have they adequately provided an explanation for the charges for management applied to the service charge account.

58. There is no documentary evidence to justify the additional management costs in 2015. Mr Mooney told the Tribunal additional fees were added for major works or s20 consultation processes, yet the Repair and Renewal expenditure in 2015 was only £636, and there is no evidence of any s20 consultation. Major works were carried out in 2013 and 2016, yet no additional fees appear to have been charged for those years.

59. The Tribunal found Mr Mooney's evidence to the Tribunal indicative of a relaxed attitude to the management function. Save for audited accounts for 2015 to 2018, no documentary evidence has been provided to justify any of the charges applied to the service charge account, although it was clear both from the Lessees' application and Mr Blume's statement of case that these were matters in dispute. When questioned and asked for clarification of the sums applied to the service charge under the various heads of dispute, the Tribunal found Mr Mooney an unimpressive witness. He was frequently vague or unable to provide a coherent answer or give specific details (save in respect of the management fee structure).

60. Although Eastbourne Lettings were responsible for maintenance for the Property, the Tribunal found that no proper and timely investigations were undertaken in respect of issues of disrepair (most particularly in relation to the water ingress to the roof). By way of example,

    (i) Given the longstanding history of repeated problems of leaks in Flats 52C and 54F and damp penetration from the roof (particularly around the chimneys) going back to at least 2012, no appropriate procedure appears to have been put in place by Eastbourne Lettings to investigate the defects and commission appropriate works in 2015. Housing Act 2004 notices appear to have been served by Eastbourne Borough Council in or around 2011 identifying damp penetration at the chimneys and party walls, yet works undertaken by DIY Wizard in 2013 had not remedied the problem.

    (ii) Mr Hogben appears to have raised the problems with leaks from May 2015, yet the process for commissioning works did not start until June 2016.

    (iii) Although Eastbourne Lettings referred to the need to inspect the roof urgently in January 2018, the email correspondence indicates that no real attempts were made by Eastbourne Lettings to investigate until approximately June 2018 [94]

    (iv) Delays were blamed on the requirement to comply with the section 20 consultation process, without any apparent consideration being given to an application for dispensation where works were urgently required to remedy water ingress.

    (v) Mr Hogben reported the water ingress was affecting electric sockets in his kitchen in August 2018 [113] yet an electrician was not instructed to inspect until October 2019.

    (vi) Ms Smith appears to have given clear instructions to Eastbourne Lettings to supervise and photograph the works finally carried out in December 2019 by AJW Builders at every stage, as well as to take photographic evidence before works commenced [70]. Email confirmation was provided by Eastbourne Lettings on 23rd December 2019 that *'the work to the main roof has been completed'* and had been signed off by them, and that the builder assured the roof was water-tight. Yet it is clear from the reports of Kingston Morehen and Southdown, that the works carried out by AJW Builders (if any) were wholly ineffective for the reasons set out below. Despite Eastbourne Lettings confirming it had photographs and videos from before, during and after the works, none of these photographs or videos have been produced either to this Tribunal or the leaseholders.

61. There are also other examples of poor management. Email evidence indicates that the fire alarm company reported an inability to access 54 Ashford Road to carry out call weekly point testing three times to

Eastbourne Lettings, but with no action taken. When Mr Hogben himself reported the same issue it appears to have taken Eastbourne Lettings over 2 months to supply a key to the alarm company. Although some reimbursement was given, the Tribunal found this a compelling example of management that was not to a reasonable standard.

62. As set out at paragraphs 38 to 40 above, no real attempt appears to have been made until recently to explore the competitive market of electricity suppliers despite an apparent history of questionable accuracy of EDF's bills or estimates.

63. The Tribunal found all of these matters were indicative of inefficiency and lack of strategic management.

64. The Tribunal has also given particular weight to the responses to the complaints made by the leaseholders. On more than one occasion Eastbourne Lettings admit to having managed maintenance issues poorly or apologise for failures or delays. By way of example in their email of 4th October 2019 Eastbourne Lettings admit to having failed to specify the correct type of door for a communal area, simply assuming that DIY Wizard would fit the right one [115]. They accept investigations into the source of water *'could have been managed much better'* [117] and following a *'very frank conversation'* between Ms Smith and Eastbourne Lettings, they *'admitted their shortcomings in the management of the block and apologise to the leaseholders'* [118]

65. However, despite these shortcomings, the Tribunal was satisfied that most recently in 2020 positive steps appear to have been taken to improve management of the block, including obtaining using brokers to obtain price comparisons for utilities and insurance, the introduction of an online portal to allow greater transparency and the development of a proper multi-year repair and maintenance plan following a survey to ascertain the nature of the defects.

66. In conclusion, the Tribunal finds that the management by Eastbourne Lettings was not of a reasonable standard, and allows £540 (inclusive of VAT) per year only for 2015 to 2019 inclusive. From 2020 the sum of £720 (inclusive of VAT) is considered reasonable.

Insurance

67. The sums applied to the service charge account in respect of the insurance are as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£1,680	£900	£1,572	£1,391	£1,421	£1,430	£1,550	£1,500

68. The issue for the applicants in relation to insurance is not the premium payable itself, which Mr Blume accepts is recoverable through the service charge. The dispute he says is about the inability to make a claim under

the policy in relation to the substantial damage to the internal fabric of the two top flats in particular (estimated to be over £13,000) because the damp penetration was caused by the lack of repair.

69. Although the applicants were told by Eastbourne Lettings they would be able to claim for internal damage on the block insurance [373], this turned out not to be the case.

70. There is no evidence before the Tribunal indicating either that the insurance policy was inadequate, nor is there any evidence that the premium recovered through the service charge was excessive. Accordingly, the Tribunal finds the sums set out above in paragraph 67 are payable.

Roofing works

71. The sums applied to the service charge account in respect of the works to the roof are subsumed within the Repairs/Renewals line item in the accounts as follows;

2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019 (est)**	**2020 (est)**
£16,056	£4,746	£636	£9,524	£258	£3,692	£4,915	£5,075

72. The Tribunal is satisfied there have been longstanding problems with water ingress from the roof of the Property. Email correspondence from 2012 indicates problems and that Eastbourne Borough Council had issued schedule of remedial action under the Housing Act 2004, which included works to remedy damp penetration in the kitchen of 54F. An inspection report in 2011 purportedly found the damp to be due to defects in chimney, roof and party wall [353]. A leak from the roof of 52 was also reported at the time Mr Blume bought his flat in 2015. Of particular note, the owner of Flat 54F prior to Mr Hogben reported damp around the chimney and firewall where the two properties met in 2012 [352], a problem which still appears not to have been resolved despite works being carried out in 2013, 2016 and 2019.

73. The roof itself is constructed of concrete interlocking tiles. The original slate roof appears to have been replaced at some point between the 1960s and 1980s. Eastbourne Lettings in correspondence from 2016 confirmed that no major works had been carried out to the roof for 30 years [379]. Ms Smith told the Tribunal that Mr Nichol (t/a DIY Wizard) only undertook minor works to the roof in 2013, during the course of what was a major renovation of the Property. However, the extent of those works is not known.

74. The Applicants have provided ample evidence of their complaints regarding water ingress from the roofs of both 52 and 54, problems that were known to the freeholder since at least 2015 [362]. Mr Hogben first

reported leaks in 54F in May 2015 [361] but by December 2015 leaks had developed in several areas, which he said at that time indicated the roof might require a complete renovation [370].

75. Although some minor works appear to have been carried out by Rob Nichol of DIY Wizard in February 2016 these appear not to have been effective [371-375], and by April 2016 Eastbourne Lettings were considering a commencing a section 20 consultation process. This appears to have been based on advice from DIY Wizard that the entire roof needed re-felting, although he is not a roofing expert.

76. Although Ms Smith says there had been no specification for the roof works tender in June 2016, and it was simply a matter of the contractors identifying the works required, the Tribunal finds this was not the case. Email correspondence clearly shows that Eastbourne Lettings relied solely on advice from Mr Nichol of DIY Wizard that the roof required re-felting, and that advice formed the basis of the tendering process [371 & 376]. Sally Mooney's email to Ms Smith of 13th June 2016, however, shows that Eastbourne Lettings were also aware that lead needed replacing around the chimney [376].

77. In June 2016, however, before DIY Wizard carried out the works, Mr Hogben again questioned whether re-felting would resolve the problems and referred to advice received from another builder who recommended the roof be entirely replaced [378]. The Tribunal finds this consistent with the opinion of Gavin Lewis of Kingston Morehen [228]. He questions the cost effectiveness of removing and replacing old tiles, rather than renewing the roof when taking into account the costs of scaffolding and labour.

78. From Ms Smith's email to Eastbourne Lettings on 9th June 2016 it is clear that the Freeholder was also aware that the roof might need replacing rather than re-felting, and was aware of the problem with damp penetration around the chimney (at least in 54F) [377]. By the time works were finally carried out in December 2016 Mr Hogben had been complaining of leaks from the roof in several locations for over 18 months.

79. Despite DIY Wizard carrying out works to rectify the damp penetration, by 2nd January 2018, just over a year later, leaks had developed again in 54F [384]. However, despite Eastbourne Lettings indicating on 29th January 2018 that an inspection was 'urgent' [382], none took place until 3rd March 2018. By August 2018 Mr Hogben reported no less than four separate leaks [391] including a leak into an electric socket in his kitchen [413]. Despite ongoing complaints from the lessees regarding both the leaks and damp penetration, the Tribunal found there was a lack of effective action to investigate and remedy the problems during 2018 and 2019. Although some efforts were made to identify the cause of the leaks and to obtain quotations from builders, there appears to have been no urgency on the part of either the Respondent or Eastbourne Lettings and no progress made in remedying the problem. Scaffolding appears to have

erected at the front of the house in September 2018 at substantial cost without repairs being carried out, whereas the leaking dormer appears to be at the rear of the property [392].

80. Although AJW Builders were subsequently commissioned in July 2019 to carry out works that were effectively a repeat of the repairs purportedly undertaken by DIY Wizard, the contractor then failed to start work until December 2019. For the reasons set out below, it is not clear what (if any) works were carried out by AJW Builders.

81. When looking at the totality of the evidence in the round the Tribunal makes the following findings as regards the question of whether the works undertaken to the roof were reasonably incurred, and whether the works themselves were of a reasonable standard.

82. Although the Respondent and her witness both maintain that the work undertaken by Mr Nichol in 2016 was satisfactory the Tribunal did not find this to be the case for the following reasons.

83. Little weight was given to Mr Nichol's statement given that he did not attend the hearing for his evidence to be tested. His statement is self-serving and does not indicate exactly what work was undertaken. He claims that he '*did..lead work'* which had subsequently been lifted and cables moved, yet it is clear to the Tribunal that the lead flashing around the chimney had not been renewed in 2016.

84. Whilst Ms Smith claimed Mr Nichol was a reputable builder with years of experience in roofing work and Mr Nichol in his statement said he had been carrying out roofing work for 14 years, no independent evidence of this has been provided, and his poor workmanship was identified by more than one independent company.

85. Mr Holt submitted it would be impossible for the Tribunal to determine the quality of the works in 2016 due to other works being carried out in the intervening period and the possibility of others gaining access to roof. However, when looking at the evidence in the round, the Tribunal was satisfied there was sufficient evidence available to it that pre-dated any works undertaken by AJW Builders on 16th December 2019. In any event, works such as defective pointing would not be affected by third parties gaining access to the roof. Based on the evidence as a whole the Tribunal reached the conclusion that the work carried out DIY Wizard was of a very poor standard and that the bulk of the 2016 works to the roof were ineffective.

    (i) 'Mr Cherry Picker' (who inspected in March 2018) identified problems around the chimney and firewall where the two properties met, and reported the mortar had been laid on top of the lead flashing, which he described as an *'unusual finish, maybe the flashing was dilapidated'* [385].

(ii) Problems around the chimney and firewall where the two properties met had been reported in 2012 by the occupant of Flat 54F prior to Mr Hogben [352], which the works carried out by Mr Nichol in both 2013 and 2016 failed to rectify.

(iii) The Tribunal was satisfied that despite quoting to replace the lead work around the chimney stacks and partition walls *'as required',* Rob Nichol did not renew flashings around the three chimney stacks which appears to have been an identified source of the problem.

(iv) At [393] is email correspondence from Eastbourne Lettings to Mr Nichol dated 6th November 2018 reporting an independent contractor had attended and inspected who was *'shocked when told that work was carried out on the roof two years ago',* and did not consider it was *'done to a satisfactory standard'*. The email identifies in particular a failure to replace the lead work, gaps in the old flashing between the dormer and the roof, incorrect pointing of ridge tiles and the chimney, a failure to repoint in some areas and a failure to replace rotten timber at the rear. Although photographs had clearly been taken at this time, these have not been produced to the Tribunal.

(v) We found this consistent with the report of Eastbourne Roofing Contractor's quotation dated 12th December 2019 following an inspection which noted *'due to very poor workman ship all 3 chimneys are leaking because the lead cover flashing are split and cover in cement. The repair that has been attempted is nothing short of a bodge job and a waste of time. Instead of removing the default lead the person has just covered it in cement….The small valley above the dormer has been cut to short and is allowing water to penetrate'*(sic) [205].

86. In relation to the roofing works (if any) carried out by AJW Builders the Tribunal has also reached the conclusion that the works were not of a reasonable standard. Save for the quotation, there is simply no evidence of any works being carried out. The Tribunal found this surprising given that Eastbourne Lettings signed the work off as satisfactory and had had been instructed by Ms Smith to obtain photographic evidence from before, during and after the works [70] and [78].

87. The Tribunal accepts that this contractor was put forward by the Applicants to carry out the roofing works. However, we find this more likely than not was in exasperation at the inability of Eastbourne Lettings and Ms Smith to rectify the defects and remedy the water ingress. However, the evidence also clearly shows that despite Ms Smith's very grave reservations about the bona fides of the company in July 2019 [404] and [407] she went ahead and instructed them to carry out the works anyway. Whilst the Tribunal accepts that she may have been in a difficult situation in consequence of the demands being made by Mr Blume and Mr Hogben, ultimately it was her responsibility (whether by

herself or through her managing agents) to comply with her repairing obligations under the lease and, if the cost of works were to be recouped through the service charge, to ensure they were reasonably incurred and would be carried out to a reasonable standard. In this case, they clearly were not. Indeed it is not even clear to the Tribunal whether AJW Builders carried out any works, but certainly they did not carry out the works identified in their quote (which included *inter alia* replacement of lead work which had been poorly installed). The Tribunal is satisfied that flashing around the chimneystacks had clearly not been replaced, as the cement over the flashings visible prior to the works [205] was still clearly visible in 2020 [480].

88. In reaching our conclusions at [71] to [76] above we have given particular weight to the reports of both Kingston Morehen and Southdown. We gave particular weight to Kingston Morehen's opinion at 12.14 [228] that the works undertaken to date had not been entirely reasonable or appropriate, that the contractors might not have carried out the right works and that the contractors had not carried out the works that they did competently. Whilst Kingston Morehen were given limited information regarding the condition of the roof and works undertaken, the surveyor clearly considers replacement of sarking felt in 2016 may have been unnecessary and inappropriate given that the defects appeared to arise due to abutment flashings and valley gutters. He opines that if the sarking felt required replacement it might indicate a problem with the existing tiles. He also opines that removing and relaying middle to elderly tiles in order to replace sarking felt would not have been cost effective given the costs of scaffolding despite the initial immediate extra cost of new tiles.

89. The Tribunal is satisfied that given the usual lifespan of sarking felt, the decision to instruct AJW to renew it again in 2019 after it had purportedly been replaced in 2016 did not constitute works that were reasonable in scope. Clearly, if the sarking felt had been replaced in 2016 (as Mr Nichol, Eastbourne Lettings and Ms Smith all appear to say it was) but had not resolved the problems, either the work undertaken by Mr Nichol was inadequate or another defect was the likely cause, yet no proper steps were taken to ensure proper identification of the cause of the leaks or to remedy the problems that had been identified (the poor pointing, defective lead flashing and so on).

90. On balance, whilst the Tribunal accepts it is likely that some works were carried out at the material time between 2016 and 2019, but finds that any works that have been undertaken have proved to be of little benefit. There have been ongoing leaks throughout, and the roof still requires a complete overhaul, if not a complete replacement. Overall, the roof of the Property has not been rendered watertight despite more than £15,000 being expended on it from the service charge. Of note, Kingston Morehen estimated the likely cost for a full renewal of the roof including new tiles, sarking felt and abutment flashings would have been in the region of £16,000 to £19,000 (+ VAT) [228], in other words not very much more.

91. Whilst the Tribunal recognises that it is for the Lessor (rather than leaseholders) to determine the extent of works to be undertaken and to appoint contractors and are under no obligation to choose the cheapest quotation or a recommendation from the lessees, where the costs are to be recovered from the leaseholders the Lessor's rights are subject to the proviso that the works are reasonably incurred and are of a reasonable standard.

92. The Tribunal is hampered in making any more detailed assessment regarding the repair/renewal line item appearing in the service charge accounts for the respective years in dispute. No final account was provided for the 2019 and 2020 service charge years. We also found a remarkable absence of detail provided by either Eastbourne Lettings or the Respondent as to the expenditure charged to the service charge account. There is a complete absence of a breakdown or the repair/renewal line item, and vouchers, invoices or receipts have not been produced to justify expenditure. Mr Mooney was frequently vague and non-specific in his oral evidence, although it was clear to the Tribunal that he had access to information on his computer that had not been disclosed in the bundle or indeed to the leaseholders.

93. In conclusion, in relation to the repair/renewal line item, the Tribunal makes the following determination.

    (i) We find the works carried out by Rob Nichol t/a DIY Wizard in December 2016 were not to a reasonable standard. The Tribunal disallows the sum of £8,040 [180] from the service charge account in 2016. The works were not effective and did not amount to a repair with a decent life span. He failed to replace the lead flashing around the chimneys and firewall despite this clearly being identified as a source of water ingress. There was inadequate and/or defective pointing or the chimney and roof tiles and the GRP in the valley gutters was incorrectly installed.

    (ii) In relation to the scaffolding costs incurred in 2018 whilst it may have been appropriate for scaffolding to be installed in order to inspect and carry out works, there is insufficient evidence justifying the sums expended (of £1,044 and £900 + VAT). Although Mr Mooney in evidence says the scaffolding was for general repairs that were nothing to do with the roof, no documentary evidence has been produced to support that claim. The repair and renewal line item for 2018 is therefore reduced by £2,332.80.

    (iii) The Tribunal also disallows the entire sum of £4,750 in respect of the works purportedly carried out by AJW Builders in December 2019 [185]. It is simply not clear what, if any works, were carried out. Any that were, were entirely ineffective in remedying the problems. Given that Eastbourne Lettings purportedly had signed the work off as satisfactory and had photographic evidence from before and after the works it should have been a simple matter to

demonstrate to the Tribunal what works had been carried out, but they have not done so.

94. In respect of the service charge demanded in advance for 2020, the Tribunal is of the view that the budgeted line items appear reasonable in scope. Ms Smith with Eastbourne Lettings appears to be budgeting for a more professional approach to the maintenance of the building. This is not, however, a determination that any of the individual costs themselves are reasonable or that services or works have been carried out to a reasonable standard. Any challenge in that regard would need to be by way of a separate application.

95. Having considered the totality of the evidence, the Tribunal is satisfied that substantial works are still required to make the roof watertight. Ms Smith and Eastbourne Lettings now appear to be taking a more sensible approach by instructing a surveyor and making a proper maintenance plan for future years, which hopefully will give the leaseholders greater confidence and lead to a more cooperative relationship than has existed in the past.

Costs applications

96. The Applicants ask the Tribunal to make orders under section 20C and paragraph 5A preventing the Respondent from recovering the cost of the tribunal proceedings from them either via future service charges, or via an administration charge.

97. An order under either section 20C or paragraph 5A only has significance if there are provisions in the lease that allow the costs of the tribunal proceedings to be recouped through a service and/or administration charge. Although the Respondent says that lease allows for such costs to be recovered, it should be noted that the Tribunal has made no express finding on this issue.

98. In deciding whether to make an order under either section 20C or paragraph 5A the Tribunal must consider what is just and equitable in the circumstances. The circumstances can include the conduct of the parties and the outcome of the proceedings.

99. The result of this application is that the Applicants have been found liable to pay some service charges which they have disputed, but not liable to pay others. However, the key factor affecting our decision is that in relation to the primary issue in dispute between the parties (namely the repair of the roof) the Applicants have been successful in their application. We have also made findings that the management of the property over past years has been less than satisfactory, and in particular Eastbourne Lettings' failure to deal adequately with these disrepair issues. The Applicants were entitled to make this application, and whilst they may have been robust there is nothing in their conduct that amounts to unreasonableness or that has increased the legal costs that

may have been payable. On that basis the Tribunal determines that it is just and equitable for orders to be made that

(i) to such extent as they may otherwise be recoverable, the Respondent's costs, if any, in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants, and

(ii) the Applicants shall not be liable to pay an administration charge in respect of those costs.

100. In respect of the application fee of £100 and the hearing fee of £200 for the same reasons the Tribunal orders that the Respondent repay these to the Applicants.

Judge R Cooper

Dated 24.05.2021

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

Appendix – the Law

The Landlord and Tenant Act 1985 Act (as amended) provides:

Section 18 Meaning of "service charge" and "relevant costs"

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs.

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

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

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

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

Section 20c Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before….the First-tier Tribunal….are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application. …

Section 27A Liability to pay service charges: jurisdiction

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

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

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

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

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

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

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

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

…

Paragraph 5A to Schedule 11 of the 2002 Act (as amended) provides:

Limitation of administration charges: costs of proceedings

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

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