FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2021/0068**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Flats 1-5, 86 Addiscombe Road, Croydon, CR0 5PP**
Applicant	**:**	**Rosalind Russell (A1)** **Daniela Marinova (A2)** **Elicia Atkinson (A3)** **Zain Joosab (A4)** **Joanne Lunan (A5)**
Representative	**:**	**Rosalind Russell**
Respondent	**:**	**Assethold**
Representative	**:**	**Mr R Gurvits, Eagerstate Limited**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge D Brandler** **Mr K Ridgeway MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR (remotely)**
Date of hearing	**:**	**20th October 2021**
Date of decision	**:**	**5th November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in a bundle of 176 pages, the contents of have been noted. The order made is described at the end of these reasons. References to page numbers in square brackets refer to the electronic page numbers.

Decisions of the tribunal

(1) In relation to the disputed service charge items, the tribunal makes the determinations as set out under the various headings in this Decision and summarised in the table at Appendix 1.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal orders that the Respondent pay the Applicants £300 in respect of a refund of the fees paid to the tribunal, to be paid within 28 days of this decision.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years
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The hearing

2. Ms Russell (A1) appeared in person by video link. She represented herself and the other leaseholders A2, A3, A4 and A5, who did not join.

3. Mr R Gurvits from Eagerstate Limited, the management company, represents the Respondent, Assethold, who holds the freehold interest in the building.

4. Mr Gurvits joined the hearing late after the Judge was informed by the Video hearing officer that Mr Gurvits had contacted them and was not happy the hearing was proceeding in his absence, having made an application to postpone. The Judge asked whether Mr Gurvits could

join the hearing by video which was facilitated by the video hearing officer and Mr Gurvits joined. He explained that he had made an application to postpone this hearing the previous evening by email timed at 4 p.m. He also told the Tribunal that he had had tested positive with Covid-19 yesterday by way of a PCR test, that he was not feeling well and did not want the hearing to proceed. He also told the Tribunal that two other First-tier Property Tribunal hearings listed earlier that week had been postponed at his request, further to his applications to the Tribunal. It was not clear on what basis those earlier hearings were postponed, as Mr Gurvits' evidence was that the positive PCR was received only on Tuesday afternoon. In relation to feeling unwell, Mr Gurvits first told the Tribunal that he was feeling feverish, he then said that that he was getting worse, and he later stated that he was feeling "*slightly feverish*".

5. Mr Gurvits argued vehemently and vociferously for an adjournment of this hearing and did not appear to be restricted in his ability to communicate. Although a child attempted to enter the room in which he sat, he asked the child to leave, and an adult woman could be heard outside the room with the child.

6. Having considered the Tribunal file, the following correspondence was noted.

(a) The hearing of this matter was originally listed to be heard on 27/09/2021. Mr Gurvits wrote on 27/07/2021 asking for the matter to be postponed until after 04/10/2021 as the hearing was listed on a date that fell on a religious holiday. He also asked for an extension to file and serve the Respondent's statement of case, explaining that August had been difficult due to staff absences. Dates to avoid were provided by him, of which 20/10/2021 was not noted to be a date to avoid.

(b) The matter was re-listed for 20/10/2021 and the parties were notified of this date on 20/08/2021.

(c) On 12/10/2021 at 12:16 Mr Gurvits emailed the Tribunal clerk stating "*I am currently isolating at home with children, with multiple positive coronavirus tests and we are not able to attend the hearing as there is no ability for us to actively participate. This will cause substantial prejudice to the case. We request that the hearing is rescheduled.*"

(d) On 13/10/2021 A1 objected stating *"yet again Eagerstates wish to defer proceedings. As the hearing is being held online Mr Gurvits*

coronavirus status should have no bearing on the matter .....throughout this process Eagerstates have failed to adhere to any time limits imposed by the tribunal in respect of submission of documents such as a statement case and bundle ie I havent received these.... If the date is put back once again I would like to be considered for an ex gratia payment as I will end up having to take a day's holiday for no reason " (sic)

(e) On 15/10/2021 a further request to postpone the hearing was received and the matter was referred to Judge Korn who asked the Tribunal clerk to write to the Respondent as follows: *"The Respondent's request for a further postponement of the hearing has been considered by a Procedural Judge and it is refused. Mr Gurvits has merely stated that he is isolating, not that he is too ill to participate in the hearing. The hearing will take place by video link and therefore there is no need for him to travel to a physical hearing. Whilst it is noted the Mr Gurvits will have children at home, that is not considered to be a sufficient reason to postpone when weighed against other considerations. Ms Russell has articulated the effect that a further postponement would have on her, and presumably it would also be (at the very least) inconvenient to the other Applicants for the hearing to be postponed again. Ms Russell's concerns about previous non-compliance with time limits by the Respondent are noted. At the hearing it will be open to Mr Gurvits to ask the Judge for suitable breaks to minimise any practical difficulties on the day"*

(f) On 18/10/2021 at 15.01 Mr Gurvits sent an email to the Tribunal which said *"We do not understand why this would not be granted, especially in light of the Tribunals decision in LON/00AF/LAC2021/0012 & LON/00BA/LSC/2021/0110. In light of these, we believe the Tribunal has set a clear precedent and we would request that this is reviewed by a procedural judge again"*

(g) On the same day, Deputy Regional Judge Carr asked the clerk to respond to Mr Gurvits as follows: "*Judge N Carr has read Mr Gurvits' email of 18 October 2021. No new information is provided that requires Judge*

Korn's decision to be reviewed. The decision in each case turns on its own facts. The request for review is therefore refused".

(h) On 19/10/2021 at 05:37 Mr Gurvits emailed the Tribunal to say "*As the same application form and the same information was used please can the procedural judge advise what the difference is between the cases. Otherwise, prima facie, this would appear to be unreasonable on the part of the Tribunal, unless further information can be provided on the reasoning behind this."* At 10.00 a.m. he emailed again stating *"Further to the below, I have also now tested positive and am dealing with this too".*

(i) On the same day at 10:22 A1 emailed to say that *"Mr Gurvits will be indoors presenting this case and a positive test in itself is not indicative of symptoms and should not be an issue. With regards to his children having the illness it is commonly known that children's symptoms are much milder and as a week has passed since Mr Gurvits' original request one would expect them to be on the road to recovery".*

(j) On the same day at 11:48 Judge Carr asked the Tribunal clerk to write as follows: *"Judge N Carr has reviewed the emails provided. She provided Mr Gurvits with a response to his previous enquiries. As Mr Gurvits is aware, the tribunal do not indulge epistolary litigation. If there has been a change of circumstances (Judge N Carr now sees he asserts he has tested positive), he needs to provide a further application supported by evidence, explaining the impact of the new circumstances, whereupon the application will be considered"*

(k) On 19/10/2021 by email timed at 15.58 Mr Gurvits sent a completed application form asking for a postponement. No detail is provided in the application, although in the body of the email he states *"please find attached a further application in this matter. As this is urgent please can this be dealt with asap. We are aware of the inconvenience this may cause but the virus is prevalent and we have provided a week's notice with the original application. If required we will attend the hearing to make the same application".* No detail is provided to suggest

Mr Gurvits is not well enough to attend the hearing.

7. The Tribunal noted that applications to postpone this hearing had first been made as early as 12/10/2021. The grounds of that application, said Mr Gurvits, was not that he was unwell or had tested positive, but because he was self-isolating with his family who had tested positive and were isolating.

8. The Tribunal asked about alternative officers who could represent Eagerstate at this hearing and how many other people were in the company. Mr Gurvits stated there were 5 others in the company, but he was adamant that no one else represent the company at the hearing. He explained that his job title was office manager, and others in the company were property managers. The tribunal asked if that was the case, why could another property manager not attend the hearing.

9. A1 opposed the application to adjourn. She said this had been the second listing of this hearing already, that Mr Gurvits had not cooperated with her in the preparation for the hearing, and that he had failed to submit his own bundle to the hearing. Mr Gurvits in response stated that he had no need to submit his own bundle, as everything relevant was before the Tribunal.

10. The Tribunal adjourned for some 30 minutes to give Mr Gurvits the opportunity to find an alternative representative from his company to attend the hearing. It was made clear to him that the Tribunal was not minded to adjourn the hearing as the matters were not complex, would not require a lengthy hearing and that it would be disproportionate to adjourn such a hearing with the consequent costs, wasted Tribunal time as well as inconvenience to the Applicants. Although he may have a positive PCR test, it was suggested to him that alone is not evidence of feeling unwell and his numerous unsuccessful attempts to postpone this hearing prior to testing positive were noted.

11. When the Tribunal reconvened at 11.15, Mr Gurvits confirmed he had no one to take his place at the hearing, that the Tribunal had shown no sympathy to him in relation to his condition and that the Tribunal should take note of the precedent of the other two hearings that he had been successful in postponing earlier in the week. In what appeared to be an attempt to bolster his position, Mr Gurvits was accompanied by the noise of what sounded like a large group of children, just out of sight, shouting and making as much noise as possible so as to disrupt the hearing. He offered no explanation for this and the Tribunal did not ask.

12. The Tribunal invited Mr Gurvits to remain and participate in the hearing, he refused, stating that he would appeal, and that the Tribunal

had not followed the precedent of the other tribunals who postponed his other hearings.

13. Having taken everything into account including the fact that the application did not raise complex issues, Mr Gurvits' ability to talk to the Tribunal very robustly without any apparent restriction despite feeling "*slightly feverish*" and Mr Gurvits' confirmation that all the relevant documents were before the Tribunal, it was determined that it was in the interests of justice to proceed in his absence as it would be disproportionate to adjourn. Having declined to take part in the hearing, Mr Gurvits left, and the hearing proceeded in his absence.

The background

14. The property which is the subject of this application is a detached three storey house converted into 5 self-contained flats. The garage to the left has been demolished to create a two-storey extension, and the loft space has been converted into a studio flat. There is a communal entrance and communal staircase used by all flats.

15. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

16. The Applicants individually hold long leases of the flats in the property, the terms of which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

17. At the start of the hearing A1 identified the relevant issues for determination as set out in her Scott schedules for the service charge years 2016-2021. She asks the Tribunal to determine the payability and reasonableness of service charges set out in Scott schedules prepared by her for those years. The only statement in response received from the Respondent was included in the landlord's comments column in those Scott schedules.

18. Having heard evidence and submissions from A1 and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Insurance premiums - £18,122.43 (2016-2021)

19. A1 has detailed the premiums claimed for each year as follows:

- 2021 - £4501.05
- 2020 - £3830 plus £456.71 = £4286.71
- 2019 - £2506.99
- 2018- £2389.99
- 2017 - £2281.26
- 2016 - £2156.43

20. Alternative quotes have been provided by A1 from Zurich for the period 2021/2022 in the sum of £1612.59 [61] and from Landsdown Insurance for the period 2021/22 in the sum of £2239.99 [75].

21. The Respondent in his only written submission which appears under "Landlord's comments" on the Scott schedule [22] states under this heading for 2016 that *"the full policy has not been provided so it is very difficult to comment on the quote and to point out any differences. However, there is quite clearly no evidence that the quote obtained is not a simple home owners policy rather than a commercial landlord's insurance that covers the relationship between a freeholder and leaseholder, where the freeholder has less control over the occupants of the property and would have to be a commercial landlord. The Landlord is not under an obligation to proceed with the cheapest quote in the market but to ensure that the market is tested and ensure a reasonable quote is obtained. A copy of a letter from the insurance brokers is enclosed and which shows that the market testing is carried out. In addition. A copy of the schedule and the policy wording is enclosed which shows the fact that the policy the landlord has taken out is far more comprehensive than a standard insurance, which is what it appears is being proposed. It is alsonot* (sic) *clear what further further* (sic) *surveys orreports* (sic) *would be required each year to ensure that the policy is valid would be required under the Applicant's quote. In addition, the Applicant has previously requested that we obtain a quote from their nominated broker, which we did, as we always try to work with the leaseholders, and attached is their response."*

22. The Tribunal did not have the benefit of the Landlord's full policy wording, which A1 explained had been provided by Mr Gurvits, but as it was 150 pages long, she had not included it in the bundle.

23. The Applicants do not dispute that that the Landlord is obliged by the terms of the lease to insure the building [165], by paragraph 5 of Part II of the Fifth Schedule (Landlord's Covenants): "*To keep the Building and the landlords fixtures and fittings therein insured (subject to such exclusions and excesses as the insurers shall apply) against loss or damage by any of the Insured Risks…."*

24. Nor do they dispute that they are obliged by the terms of the lease by the Fourth Schedule (Tenants Covenants) to reimburse the Landlords

under the terms of the Sixth Schedule Part 1 (items falling within the Service Charge), paragraph 13 "*The Insurance of the Building…"*

25. What is in dispute is the amount charged for the insurance premiums which the Applicants say are not reasonable, and provide alternatives.

The tribunal's decision

26. The tribunal determines that the full amounts demanded by the Landlord Respondent in respect of the insurance premiums for the service charge periods 2016-2021 are payable in full.

Reasons for the tribunal's decision

27. The Tribunal noted that the premiums demanded have steadily increased quite sharply. While the quotations obtained by the Applicants are much more reasonable, Mr Gurvits has made some valid points in his response in relation to the premiums charged. He states that he is not obliged to take the cheapest quote and further that he has contacted the Applicants' choice of broker for a quotation.

28. The Tribunal were unable to fully consider whether the terms of the Applicants' quotations matched those of the terms of the Respondent's policy, as the 150 pages provided by the Respondent to the Applicants had not been included in the bundle of documents which were before the Tribunal.

29. The Tribunal took the view that as a commercial landlord, there are added responsibilities involved in managing a building which includes the lack of control on a day-to-day basis. Such issues are likely to increase the cost of a policy. There is no doubt that a homeowner can obtain a cheaper quotation than that provided to commercial landlord. However, in this instance, the Applicants are bound by the terms of the lease which would not permit them to insure the building themselves.

30. Taking all of that into account, the Tribunal make no deductions to the insurance premiums claimed for 2016-2021.

Carpet cleaning - £144 per annum (2018-2020); £150 per annum estimated charge (2021)

31. This charge relates to steam cleaning of the carpet in the communal area twice a year.

32. The Applicant does not object to the carpet cleaning, nor does she say that the charge is excessive or that the work is not done to an adequate standard. Her complaint is that she was informed in writing by the

Respondent in 2008 that cleaning of the communal areas and the windows could be managed by the leaseholders unless they wanted the Respondents to manage these tasks. That letter in 2008 was apparently signed by Mrs E Gurvits, who is a director of the Respondent company, and who previously managed the building prior to her son, Mr R Gurvits, taking over. However, page 2 of the letter is missing. The Applicant did not know if any of the other leaseholders had received such a letter, although she confirmed that the other leaseholders have only been at the property for some 5 years, whereas A1 has been there since 2007.

33. The Applicant has raised this argument directly with Mr Gurvits who, she says, ignored the issue. She feels that it is dishonourable to go back on the terms of that letter, that the system worked well before, whereby if the staircase was dirty, one of the leaseholders would vacuum it, and each flat would clean their own windows.

34. She explained that some years ago a new carpet was installed in the communal area which services all of the flats. That appears to have prompted the change in regime, whereby the Respondent took over the responsibility of cleaning the carpet and the windows.

35. The Respondent in the Scott Schedule states that "*the landlord has a duty to maintain the communal areas which they have done. No alternative quotes provided"* [27].

The tribunal's decision

36. The tribunal determines that the amount payable in respect of carpet cleaning for the period claimed 2018-2020 at £144 pa is reasonable and payable. The charge for 2021 is estimated at £150 pa. which is not an unreasonable increase from the previous years' charges. .

Reasons for the tribunal's decision

37. Under the terms of the Sixth Schedule (items falling within the service charge) of the lease, the Landlord Respondent is obliged in relation to *"2. The cleaning lighting repair…."* and "*4. The cleaning of the exterior windows"* [166]. This is not in dispute. Whilst there may have previously been an informal arrangement under which the leaseholders carried out vacuuming and window cleaning, unless the terms of the lease are varied, the parties are bound by them.

38. The Tribunal did not find it unreasonable that after having installed new carpet into the communal areas, the landlord would want to keep it maintained to maximise its life. The amount of traffic from the 5 flats is not minimal. The amount charged at £72 per visit for a service to steam clean the communal carpet did not seem unreasonable to the tribunal.

39. The estimated charge for 2021 demonstrates an increase of only £3 per visit which is not considered unreasonable.

Window cleaning - £455.40 (2019); £356.40 (2020); estimated charge £400 (2021)

40. A1 challenges these amounts on the same terms as set out in under carpet cleaning above. She does not challenge the quality of the window cleaning or the reasonableness of the charge. She challenges it merely on the basis, she says, that it is not honourable for Mr Gurvits to go behind the agreement offered by his mother in a letter dated 14/01/2008 [176].

41. The Respondent's reply on the Scott Schedule is that "*the landlord has a duty to maintain the communal areas which they have done. No alternative quotes provided."*

The tribunal's decision

42. The tribunal determines that the amount payable in respect of window cleaning claimed for the period 2018-2020 are reasonable and payable in full. The charge for 2021 is estimated at less than the charge in 2019 and not considered to be unreasonable. . .

Reasons for the tribunal's decision

43. The Respondent is not bound by the terms of the letter in 2008. The lease obliges the landlord to clean the windows as set out above and there has been no application to vary the terms of the lease.

44. The amounts charged in the service charges vary. The reason for this is unknown, as only a few invoices were provided in relation to window cleaning [131-138]. Some of them charge £99 plus VAT, and one charges £99 without VAT. This is apparently a charge per visit, as the invoices provided are quarterly.

45. The property is a large 3 storey property which would require ladders, probably two men, and time to complete the task. The Tribunal found that the amounts charged are reasonable for these works.

Drains service - £306 (2019); £306 (2020); £210 (2021)

46. A1 objects to the charge for a "*6-monthly drains service*" in the 2019 accounts charged at £306 [174], the "*drains service*" in 2020 [80] charged at £306 and the "*drains service*" in 2021 [53] charged at £210 and says these works were unnecessary.

47. To demonstrate this point she referred the Tribunal to the service charge year 2018 [173] during which period the leaseholders were charged for "*Inveytigaty blocked drain*" (sic) (presumably investigating blocked drain) £198, CCTV on drains £300.00, "*Dyscale drainage*" £540.00, Drainage survey £212.50 and Drain repair £290.00. She argues that a charge in £2019 for a 6 monthly drains service should be unnecessary further to the expenses charged for drains in 2018.

48. The service charges for 2020 include "*multiple call outs for drain blockages and descaling £660*", "*Repair of drain epaxy £990.00*", "*waste disposal £120*" [80]. None of those works are disputed by A1, but she says it is hard to understand why a drain service at a cost of £306 would be required in the same year after all those related works.

49. Similarly in 2021 she cannot understand why a further drain survey has been charged at a cost of £210. No evidence of any drain survey was before the Tribunal.

50. The Respondent in his reply on the Scott Schedule states that "*the landlord has a duty to maintain the communal areas which they have done. No alternative quotes provided*". He makes no reference to the extensive works carried out to drains in 2018 and 2020.

The tribunal's decision

51. The tribunal determines that the amount payable in respect of drain services in 2018, 2020 or 2021 are not payable.

Reasons for the tribunal's decision

52. Having considered the extent of the drains works charged in 2018 and 2020 which included surveys, the Tribunal were satisfied that it was not reasonable to charge for a "*6-monthly drain service*" in 2018, or a "*drain service*" in 2020 or in 2021. These appeared to be unnecessary works and the charges are unreasonable.

53. The Tribunal could see no reason why these works were carried out so frequently. No evidence had been provided by the landlord to explain, other than his short statement in the Scott schedule.

EICR remedial works - £778.44 (2020)

54. A1 objects to the amount charged for materials under this heading for which she says the leaseholders have been overcharged. She does not dispute the labour charges. She took the Tribunal to the invoice dated 24/04/2020 from Propertyrun Electrical Contracting

[84]. In particular she disputes the unit cost of the 3 x Aico smoke alarms at £38.20. She also objects to the "*6x LED bulkhead light fitting IP44 with integrated driver as no diffuser fitted on fire exit*" at £477.00 plus VAT. A1 has provided alternative quotes for items which she says are identical.

55. A print-out from Ebay [89-90] for the Aico smoke alarm priced at £16.88 per unit, and the bulkhead IP44 light at £23.00 per unit, both of which A1 says are identical to those installed by the contractors. She asks the Tribunal to rely on the photographs of the items in situ [86-88] to demonstrate that they are the same as those described in the Ebay prices provided, as no specification is provided in the contractor's bill.

56. Although A1 does not dispute the labour costs of installing the lights by the contractor, she did not provide an alternative quote for a contractor to fit any independently purchased lights/smoke alarms. She says that the contractor was likely to have bought these at cost price and yet the cost benefit is not passed on to the leaseholders.

57. The Respondent states in his reply on the Scott schedule "*the costs are reasonable as they include fitting costs"* [31].

The tribunal's decision

58. The tribunal determines that the full amount charged under this heading is payable.

Reasons for the tribunal's decision

59. The Tribunal were not satisfied that the items sourced by A1 on Ebay were of the same specification as those provided by the contractor. The Tribunal could not establish this from photographs alone. The specification would be required.

60. A further difficulty with A1's reasoning is that whilst not challenging the cost of fitting, it is unlikely that a fitter would charge that price if the items had been sourced elsewhere. Clearly this was an "all in" service. Even if the Ebay items had the same specification, which is doubted, the fitting charge would be likely to be more expensive.

61. In addition, the invoice made mention of the requirement of a diffuser, which would appear to be important. There was no alternative quote for this. For those reasons the full amount of the demand under this heading is payable.

Fire Health and Safety Service - £255.36 (2020); £260.00 (2021)

62. A1 argues that there is no legal requirement for such a service and that it has been introduced to increase charges to the leaseholders. A1 referred the Tribunal to a document that she found on the internet which she says is from Local Government Association [79]. Unfortunately, only one page was reproduced with no indication of the organisation who produced that document.

63. She says that fire safety equipment has been in the building for years without there ever having to be used.

64. The Respondent's position is that this is "*required by law and by all fire regulations".*

The tribunal's decision

65. The tribunal determines that the demands for this item are payable.

Reasons for the tribunal's decision

66. The building is more than 20 years old. Fire safety is vital for the residents and their visitors. Fire safety equipment must be serviced otherwise, in an emergency, it may not be effective. The amounts charged are reasonable and payable.

Surveyor's maintenance schedule - £690.00 (2020)

67. In November 2019 JMC Chartered surveyors carried out an inspection of the property and produced a report titled '*planned preventative maintenance schedule'* [96]

68. A1's opinion is that such inspections and reports are not necessary because Mr Gurvits has always carried out works when they are needed. She says forward planning is unnecessary.

69. She was asked whether forward planning might help with budgeting and making sure issues did not deteriorate. She did not agree.

70. The Respondent's comments on the Scott Schedule are "*this is necessary, as it allows for long term planning no alternative quotes provided"* (sic)

The tribunal's decision

71. The tribunal determines that the demand for this item is payable.

Reasons for the tribunal's decision

72. The Tribunal find that carrying out a survey to establish a 5 year plan is good estate management and the charge is reasonable and payable.

Drone survey - £250.00 (2020)

73. On 31/10/2020 a drone investigation was carried out. The report [105-110] consists of photographs of the roof and the invoice.

74. A1's opinion is that this is not necessary. She was asked if she did not think it was a good idea to check the roof. She did not.

75. The Respondent's position is that "*allowed full survey of the roof and to plan for future expenditure no alternative provided*" [33].

The tribunal's decision

76. The tribunal determines that the demand for this item is payable.

Reasons for the tribunal's decision

77. The Tribunal find that investigating the state of the roof with a drone is good estate management. It would not be possible to see whether tiles had slipped without such a survey. Such an investigation is preferable to waiting for a leak to occur in a flat. The amount charged is reasonable and payable.

Trace and access leak - £432.00 (2020)

78. A1 explained that there had been a leak into her bathroom from the flat above. She had raised this with the Respondents who had sent two contractors to investigate why there was a leak into her flat. She referred the Tribunal to the invoice [111] and the report which states that the bath panel upstairs was removed, taps turned on etc, and no leak was found. The report states that the bath panel requires silicon to the floor as well as the shower screen requiring a trim. This was advisory and no remedial works were carried out. The invoice refers to materials charged at £25 plus VAT, but none were used, other than the use of the screwdriver, and work was charged at £335.00 plus VAT. A1 says this is excessive. She also refers to her investigations with Companies House in relation to the contractors, M3S Property Services

Ltd, which on the face of the invoice provides a registration number. She found no record of the company anywhere.

79. The Respondent states *"reasonable costs for works carried out. No alternative costs provided*".

The tribunal's decision

80. The tribunal determines that the amount of £150 inclusive of VAT is reasonable and payable.

Reasons for the tribunal's decision

81. The Tribunal found the amount claimed to be excessive. There was no evidence of materials having been used, as the report was advisory only, and so the Tribunal could not see why there was a charge for £25 plus VAT. In relation to the charge to remove a bath panel, check for dampness, check taps and toilet flush, reinstate the bath panel and take some photos, the Tribunal found the charge of £335 plus VAT to be excessive and allowed £150 inclusive of VAT as a reasonable charge.

Fire Health and safety risk assessment - £400.00 (2021)

82. The Applicants argue that this is only required every 18-24 months. The last one was carried out in 2020, as evidenced by the service charge demand. No dates were provided for the assessment in 2020, nor was the assessment report provided by the Landlord.

83. The Respondent landlord's position is set out in the response in the Scott schedule. He states *"survey recommend annual inspection although carried out every 18-24 months*".

The tribunal's decision

84. The tribunal determines that the amount payable in respect of the fire safety risk assessment in 2021 is not payable.

Reasons for the tribunal's decision

85. The Respondent confirms that these are carried out only every 18-24 months [32]. The service charge demand for 2020 shows an assessment carried out that year. Even if that assessment was carried out in January 2020, for which there is no evidence, by the Respondent's own assertion of assessments every 18-24 months, the earliest that could be due would-be June 2021, again for which there is

no evidence. The Tribunal concluded that this assessment has been premature and should not have been carried out until 2022.

Application under s.20C and refund of fees

86. At the end of the hearing, A1 made an application for a refund of the fees that she had paid in respect of the application/ hearing. Having heard the submissions from A1 and taking into account the determinations above, the tribunal orders the Respondent to refund £300 paid by the Applicants within 28 days of the date of this decision.

87. In the application form and at the hearing, A1 applied for an order under section 20C of the 1985 Act. Having heard the submissions from A1, in which she reminded the Tribunal that the Respondent had failed to take part in the hearing, had taken extensive measures to try to have the hearing adjourned, and had failed to provide her with much documentation. On that basis she says that the Respondent does not have any legal costs incurred in this matter, or if he does, those should be minimal. In any event, she argues that she had tried to raise issues with Mr Gurvits prior to issuing an application, but that he did not respond to any of her issues. She had no choice but to issue the application, and the Respondent should bear their own costs of the application.

88. The tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge D Brandler **Date:** 5th November 2021

Rights of appeal

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

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

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not

complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

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

APPENDIX 1: Summary of the Service Charge Decision

	Service Charge in dispute	Amount claimed by Respondent	Amount agreed by Applicant	Tribunal's decision (if different)
2016	Insurance	£2156.43		£2156.43
2017	Insurance	£2281.26		£2281.26
2018	Insurance	£2389.99		£2389.99
"	Carpet cleaning	£144.00		£144.00
2019	Insurance	£2506.99		£2506.99
"	Window cleaning	£455.40		£455.40
"	Carpet cleaning	£144.00		£144.00
"	Drains Service	£306.00		Not payable
2020	Insurance	£3830.00 & £456.71		£3830.00 & £456.71
"	Window cleaning	£356.40		£356.40
"	Carpet cleaning	£144.00		£144.00
"	EICR remedial works	£778.44		£778.44
"	Fire health and safety service	£255.36		£255.36
"	Surveyor's planned maintenance schedule	£690.00		£690.00
"	Drone survey	£250.00		£250.00
"	Trace and access leak	£432.00		£150.00 (inclusive of VAT)
"	Drains Service	£306.00		Not payable
2021	Insurance	£4501.05		£4501.05

estimated				
“	Window cleaning	£400.00		£400.00
“	Carpet cleaning	£150.00		£150.00
“	Fire health and safety risk assessment	£400.00		Not payable
“	Fire health and safety service	£260.00		£260.00
“	Drains service	£210.00		Not payable

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

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

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

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Landlord and Tenant Act 1987

Section 47

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a) the name and address of the landlord, and
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—
(a) a tenant of any such premises is given such a demand, but
(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal], there is in force an appointment of a receiver or manager whose functions

include the receiving of service charges [or (as the case may be) administration charges] from the tenant.

(4) In this section *"demand"* means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent [, service charge or administration charge] otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent [, service charge or administration charge]1 shall not be so treated in relation to any time when, by virtue of an order of any court [or tribunal] , there is in force an appointment of a receiver or manager whose functions include the receiving of rent [, service charges or (as the case may be) administration charges] from the tenant.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).