FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2021/0110**
HMCTS code (paper, video, audio)	**:**	**V: FVH Video Remote**
Property	**:**	**Flats 1, 2, 3, & 4, 21 London Road, Tooting, London SW17 9JR**
Applicants	**:**	**Ms Tolu Lawal (Flat 1) Ms Charley Monaghan & Ms Roseanna Curran (Flat 2) Mr Daniel Frasca (Flat 3) Ms Elinnor Pinnegar (Flat 4)**
Representative	**:**	**In person**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr Ronnie Gurvits of Eagerstates Limited (Manging Agents)**
Type of application	**:**	**Liability to pay service charges and/or administration charges**
Tribunal members	**:**	**Judge N Hawkes** **Mrs E Flint FRICS**
Dates of remote hearing	**:**	**23 and 24 November 2021**
Date of decision	**:**	**7 December 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: FVH REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined at a remote hearing. The documents that we were referred to, the

© CROWN COPYRIGHT

contents of which we have noted, are in a bundle of 315 pages plus appendices together with a bundle of invoices for the year 2020/2021. The order made is described below.

Decisions of the Tribunal

(1) The Tribunal's determinations are set out under the various headings below.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred by the Respondent 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.

(3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants' liability, if any, to pay an administration charge in respect of the Respondent's costs of these proceedings.

(4) The Tribunal makes an order requiring the Respondent to reimburse any Tribunal fees paid by the Applicants within 28 days of the date of this decision.

The application

1. The Applicants seek determinations under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable. Determinations are sought in respect of the years 2018/19 to 2020/21 inclusive.

2. 21 London Road, Tooting, London SW17 9JR ("the Property") is a block containing four two-bedroom flats. The Applicants are the long lessees of the four flats and the Respondent is their landlord.

3. The Applicants' leases require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate. The Tribunal has been informed that the Applicants acquired the right to manage the Property on 13 June 2021.

4. Directions were given on 24 May 2021 ("the Directions") leading up to a final hearing. The Directions were amended on 7 July 2021 and 9 September 2021.

5. 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.

The hearing

6. A video hearing took place on 23 and 24 November 2021. Each of the Applicants appeared in person at the hearing. The Respondent was represented by Mr Ronni Gurvits of Eagerstates Limited ("Eagerstates"). Eagerstates are the Respondent's managing agents.

7. Due to technical issues, some of the parties lost their video connection from time to time during the course of the hearing. When this occurred, the hearing was paused in order to enable the relevant party to reconnect.

The issues

8. In their skeleton argument, the Applicants state:

> *"The Applicants request that the Tribunal bars the Respondent from taking any further part in these proceedings and determine all issues against the Respondent, pursuant to rules 9(7) and (8) of the 2013 Rules, as mentioned in Note (c) of the Directions dated 24th May 2021 and the subsequent amended Directions. The Respondent has failed to abide by Direction 4 by not submitting their case to the Tribunal or to the Applicants, nor did they meet the original deadline for Direction 2, resulting in an initial delay to this case."*

9. The Directions include the following warning at Note (c):

> *"If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules."*

10. There are no documents submitted by the Respondent in accordance with paragraph 4 of the Directions ("the landlord's case") before the Tribunal. Mr Gurvits informed the Tribunal that the Respondent made an application seeking to comply out of time but was not granted permission to do so. It is not open to this Tribunal to revisit earlier case management decisions.

11. It is not in dispute that the Respondent has breached the Tribunal's Directions. Accordingly, it was open to the Tribunal, as proposed by the Applicants, to bar the Respondent from taking any part in the final hearing and to determine all issues in favour of the Applicants without

hearing from Mr Gurvits pursuant to rules 9(7) and (8) of Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

12. However, having considered the overriding objective and in particular the size and therefore the importance of this case to the Respondent, the Tribunal determined that we would not exercise our discretion to make the order sought. We instead allowed Mr Gurvits to participate in the hearing by questioning the Applicants and by making submissions.

13. There are issues in the Applicants' Scott Schedule which are not set out in their application dated 9 February 2021. Mr Gurvits submitted that the Applicants should be limited to raising the matters expressly set out in their original application. However, the Tribunal's Directions provide (emphasis supplied):

> *"The tribunal has identified the following service charge years and issues in dispute and to be determined though these may be amplified by the parties in their statements of case:*
>
> - *The service charge years in dispute are 2019, 2020 and 2021*
>
> - *The applicants seek a determination on the reasonableness of all heads of service charges for the years identified and the standard of the works/services provided.* ***These disputed items include****:"*

14. The use of the word "include" appears to indicate that the list of items set out in the Directions was not intended to be exhaustive. The Applicants have stated their case in the form of a Scott Schedule which was served on the Respondent on or before 9 August 2021. They do not seek to expand the scope of their application beyond the years referred to in the application and in the Directions. However, they do challenge service charge items which were not identified in the application (including the actual service charges for 2021 which were not available at the time the application was issued). There is also a challenge concerning administration charges which were demanded by the Respondent during the time period which is under consideration when the lessee of Flat 1 missed a service charge payment.

15. If and insofar as it may be necessary, the Tribunal grants permission to the Applicants to amend their application to include all of the service charges and administration charges demanded in the years set out in their application which are disputed in their Scott Schedule and to seek determinations in respect of the actual service charges rather than the estimated service charges now that the actual figures for 2020/21 are available.

16. By the date of the final hearing, the Respondent had had sight of the Scott Schedule for a period of approximately 11 weeks and therefore would not be taken by surprise by its contents. The actual figures emanate from Eagerstates and Mr Gurvits would therefore be familiar with them. In the circumstances of this particular case, the Tribunal considered that we could fairly and justly reach a determination on the actual charges for 2020/21, thereby avoiding the potential time and expense of a further Tribunal application if these charges continued to be disputed.

17. At times, the Applicants inadvertently sought to raise issues going beyond the scope of the permission set out in paragraph 15 above. The Tribunal indicated that we were not minded to permit the Applicants to raise any such issues on the grounds that the Respondent would be likely to be prejudiced and the Applicants did not seek to persuade the Tribunal otherwise.

18. The Applicants requested sight of the 2020/21 invoices and the Tribunal determined that Mr Gurvits should be permitted to produce and rely upon these invoices because he may not have appreciated that the actual charges for 2020/21 would be in dispute. The Tribunal therefore asked Mr Gurvits to serve copies of these invoices on the Applicants and on the Tribunal between day one and day two of the hearing, and in good time for the Applicants to consider the documents before the hearing resumed.

19. Part-way through day two of the hearing, Mr Gurvits sought to orally make an application under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for dispensation from the consultation requirements contained in section 20 of the 1985 Act in respect of certain qualifying works.

20. The Applicants are litigants in person and it would not have been possible for them to take legal advice or to research the law on dispensation during the course of the hearing. Further, no explanation was given for the Respondent's failure to make this application at a far earlier stage or for Respondent's failure to set the proposed application out in writing. In all the circumstances, the Tribunal determined that we would not permit the Respondent to make this application during the course of the hearing.

21. The Tribunal was provided with a copy of a specimen lease and was informed that, so far as is material, all of the Applicants' leases are in identical terms. An appendix of relevant legislation is attached to this decision.

The Tribunal's determinations

Insurance and broker's fee

22. The total costs claimed by the Respondent under this heading are £2,714.82 for the year 2018/19, £2,714.82 for the year 2019/20 and £3,443.83 for the year 2020/21.

23. The Applicants state that the charge of £3,443.83 in the final year only covered a period of approximately 6 months, the Applicants having acquired the Right to Manage part way through the service charge year. This assertion was not disputed. The Applicants submissions concerning the insurance related costs include the following:

"Not reasonable in amount.

The landlord has not arranged and provided fair value and competitive buildings insurance for the tenants. The policy is inferior due to no terrorism cover and higher cost for no reduction in excess.

The estimated insurance cost in the 2020/2021 accounts for the full year was £3,364.8. The landlord only insured the property until 13th June 2021 because the tenants got Right to Manage. The landlord charged the tenants £3,443.88 for half a year. This cost is more than the estimate and for half the time.

The tenants' new management agent has arranged building insurance for the sum of £1,566.87, a 54% decrease in price for the tenants, whilst providing superior cover. This is due to the fact that the new policy includes terrorism cover, provides a very similar sum insured but for half the price.

In the case of Wright v Assethold Limited [2018], the tribunal concluded that, given the differences between the premiums obtained by the Applicants and the Respondents, the Respondents premiums are unreasonably incurred.

The tenants would pay £1,566.87."

24. The Applicants also questioned whether a broker's fee which they had been charged for had been paid. Mr Gurvits stated that the accounts have been certified by an external accountant who has seen evidence of the broker's fee. He also drew attention to the fact that the excess for water escape in the Respondent's policy was £250 but in the Applicants' policy it is £500. He submitted that this would significantly affect the level of the premium.

25. In response to questioning, Ms Curran stated that the Applicants' managing agents referred the Applicants to several different estimates for the insurance cover. Ms Monaghan stated that the Respondent has failed to supply the Applicants with the Respondent's full insurance policy so it is not possible to identify the risks in respect of which the Respondent obtained cover and to properly compare the two policies. She stressed that the Applicants' policy was obtained by an experienced management company rather than by the Applicants themselves.

26. Insurance costs will be reasonable if they fall within a reasonable range; we accept a submission made by Mr Gurvits that the landlord is not required to obtain the cheapest possible insurance cover. The Applicants state that their current insurance was obtained by experienced managing agents and that they were provided with a range of estimates. We accept this evidence but we are only able to place limited weight upon it because we have not had sight of the alternative quotations.

27. The Tribunal finds that it is likely on the balance of probabilities that the cost of the insurance provided by the Respondent falls outside the reasonable range of charges but we do not accept that the Applicants should pay no more than£1,566.87 per year. We find that the insurance related costs (including the broker's fee) fall to be reduced to an average of £2,000 per full year with the sum of £1,000 payable in respect of the period of approximately six months in the final year during which the Respondent provided cover.

28. In reaching this decision, the Tribunal has taken into account the limited information available concerning the Respondent's insurance policy; the cost of the insurance cover obtained on behalf of the Applicants after the end of the relevant period and by the Respondent during the relevant period; the submissions made by the parties; and the Tribunal's general knowledge and experience of the cost of insurance cover. We accept on the balance of probabilities that there was likely to have been a broker's fee.

29. Accordingly, of the sums claimed by the Respondent under this heading and set out at paragraph 22 above, the Tribunal finds that £5,000 in total is reasonable and payable.

Carpet cleaning

30. The Respondent has charged the Applicants for steam cleaning the carpets of the communal areas of the Property twice a year. The Applicants submitted at the hearing that these service charge costs were not reasonably incurred.

31. The Applicants' Scott Schedule includes the following submissions:

"21 London Road is a small property and subject to a full cleaning schedule. Given the likely cost of replacement carpet in due course, steam cleaning twice a year is unnecessary and uneconomic and the tenants deem this to not be reasonable. In the case of Ms Julier v. Assethold Ltd [2011], carpet cleaning was found to be wholly unreasonable. In this case, the applicant was charged less than in this case and the block of flats was much larger than 21 London Road. "

32. The Applicants referred the Tribunal to floor plans in support of their contention that the carpeted areas of the common parts are very small in size. They stressed that there are only five people living at the Property and the carpets are hoovered every week. Although the occupants of a neighbouring block have a right of way through the front door of the Property, down one stairwell and out of the back door, the neighbouring property is of a similarly small size and the use of the right of way is light. Mr Gurvits submitted that it was reasonable to steam clean the carpet to protect the life of the carpets and to keep the Property looking fresh.

33. The Tribunal accepts the Applicants' submission that in a small block with common parts which are very modest in size, with low footfall within the block and light use of a limited right of way, weekly hoovering of the carpet was sufficient and that the costs of steam cleaning the carpet were not reasonably incurred. We note that no party suggested that this was luxury accommodation and that, when the carpets eventually come to be replaced, the surface area to be covered will be modest.

34. Accordingly, the Tribunal finds that, of the sums charged by the Respondent for steam cleaning the carpets, nothing is payable.

Repair fund

35. In each year, the estimated service charge has included a charge in respect of a repair fund. The Applicants did not understand how the repair fund been spent.

36. Mr Gurvits referred the Tribunal to the actual costs for the year ending 25 December 2020. He explained that the "repair fund" had simply been used to meet the actual service charge expenditure. The repair fund is not referable to a specific category in actual service charge accounts and the monies have been used to meet a wide range of costs. The estimated sums paid by the lessees under the heading "repair fund" must therefore be credited against the actual service charge costs. It is not the role of the Tribunal to carry out an account but we note the Mr Gurvits states that he has done this.

37. By Part 7 of the Applicants' leases, the service charge expenditure includes the amount which the landlord may reasonably require on account of anticipated expenditure. In our view, the estimated charges

under this heading were reasonable in amount. However, the fact that "repair fund" is such a broad category made it difficult for the lessees to compare the estimated service charges with the actual service charges and to understand the nature of the "repair fund".

2019 UK Power Network

38. This challenge concerns a charge in the sum of £600 for work undertaken by Propertyrun Electrical Contracting ("PEC"). PEC's invoice is dated 3 January 2019 it relates to work undertaken by PEC in liaising with UK Power Networks. It was intended that UK Power Networks would install a dedicated landlord's power supply at the Property. This did not, however, occur before the Right to Manage was acquired in 2021.

39. There is no witness statement from the Respondent explaining why PEC was needed to liaise with UK Power Networks. Mr Gurvits submitted that it was reasonable to employ a consultant to liaise with UK Power Networks in order to ensure that the correct work was undertaken. However, he also stated that he filled out the relevant form before he employed the consultant. No identifiable benefit was obtained for this work between January 2019 and June 2021 when the Applicants acquired the Right to Manage. "Liaising" is a general term and it is not clear from the invoice that any specific input was provided by PEC which could not have been supplied by an experienced managing agent.

40. In all the circumstances, the Tribunal is not satisfied on the balance of probabilities that these costs were reasonably incurred. Accordingly, we find that of the charge in the sum of £600 nothing is payable.

Fire, health and safety

41. The charges under this heading which are challenged are as follows:

    (i) In 2019, two charges for a 6 monthly service at a cost of £240.90 per visit; repairs to the AOV system in the sum of £311.52; and three charges for the testing of the fire alarm and smoke detectors by the cleaners at a cost of £54 each time.

    (ii) In 2020, the cost of a Fire Health and Safety Risk Assessment in the sum of £288.

    (iii) In 2021, Fire Health and Safety Survey costs totalling £605.84 (£350 plus £255.84).

42. In our view, the three charges of £54 for testing the fire alarm and smoke detectors which were challenged fall outside the reasonable range and should be reduced to £10 for each occasion. The testing was carried out by cleaners who were already at the Property and is unlikely to have taken more than a couple of minutes. Although Mr Gurvits stated that the cleaners were trained, no witness statement has been filed on behalf of the Respondent explaining this and setting out the nature of the training.

43. Having considered the evidence to which we were referred, we find that the other fire, health and safety costs are reasonable and payable. We accept Mr Gurvits' submission that the date of an invoice is not necessarily the date on which the work was carried out and we are not satisfied on the balance of probabilities that the frequency of the work was excessive. We have not been provided with any alternative quotations.

2019 Door Replacement

44. The Applicants have been charged the sum of £2,608.27 for the replacement of the front door at the Property in 2019, plus a fee of £397.87 for a consultation carried out by Eagerstates. The parties agree that whether or not the fee is payable will depend upon whether the charge for replacing the door is payable.

45. The Applicants assert that the front door did not require replacement, alternatively that a proportion of the costs should have been recovered from the occupants of 23 London Road, who are required by a deed ("the Deed") to contribute to these costs.

46. On being questioned by Mr Gurvits, Mr Frasca accepted that he had complained about the condition of the door. Accordingly, we find on the balance of probabilities that it is likely that the door was damaged. The original door was UPVC and the replacement door was composite. We are satisfised that, if the UPVC door was damaged, it was reasonable to replace it with a composite door which will be more secure. Although the costs appear high, we have not been provided with any alternative quotations and we are not satisfied that the costs of replacing the door fall outside the reasonable range.

47. In the absence of any contrary requirement in the Applicants' leases, it is open to the Respondent to recover the service charge costs relating to the replacement of the door in full from the Applicants before seeking to recover a contribution from the lessees of 23 London Road pursuant to the Deed. The Applicants did not refer the Tribunal to any contrary requirement in the specimen lease. There is no evidence that, after recovering these costs from the Applicants, Mr Gurvits then took steps to obtain a contribution to these costs from the lessees of 23 London Road pursuant to the Deed but this is a management issue.

48. Accordingly, we find that the costs challenged under this heading (£2,608.27 plus £397.87) are reasonable and payable.

2021 Dehumidifier £2,792.40

49. In their Scott Schedule, the Applicants state of this charge:

"Not payable under lease.

Not correctly demanded.

The tenants were charged for a dehumidifier in 2021's final accounts (appendix 11). Given the cost is over £250 per flat, the threshold for issuing a Section 20 notice was met. The landlord did not issue a Section 20 for this work. Furthermore, the tenants do not believe this work was carried out as none of the tenants have seen a dehumidifier, nor are they aware of any reason the building needs a dehumidifier. The tenants have not been provided with a receipt for this work, despite requesting one.

The tenants would pay £0."

50. The Tribunal was referred to invoices (which were not previously provided to the Applicants) which show that a dehumidifier was hired from February 2021 to May 2021. The invoices record that a dehumidifier was needed due to water ingress and humidity and that the switch room at the Property required urgent repairs due to water ingress. These statements are evidenced by photographs of the switch room which accompany the invoices. The photographs show damp, mould and water being collected.

51. The sum set out in each invoice is below the section 20 consultation threshold and Mr Gurvits stated that no consultation was carried out because it was not known for how long the dehumidifier would be needed. Every two weeks an inspection was carried out to assess whether there was a need for a dehumidifier and each invoice was a separate job. Mr Gurvits said that the issue of damp was urgent due to the presence of electrical installations in the switch room and that no contract was entered into to provide a dehumidifier for more than 2 weeks at a time. He stated that, at the material time, investigations were being carried out including a damp survey. Although the source of the damp was not identified, the problem stopped.

52. On the basis of the photographs attached to the invoices which show damp, mould and the collection of water, the Tribunal accepts Mr Gurvits' submission that the costs of the dehumidifier were reasonably incurred. We also accept that it is unlikely to have been known, at each stage, for how long a dehumidifier would be required and that in all the

circumstances the invoices fall to be considered as individual service charge items. Accordingly, we are not satisfied that a consultation should have been carried out pursuant to section 20 of the 1985 Act and we find that the costs of hiring the dehumidifier in the sum of £2,792.40 are reasonable and payable.

2021 BNO assessment £1,141.68

53. The Applicants' submission at the hearing was that the sum charged under this heading was above the section 20 threshold and that a statutory consultation should therefore have been carried out.

54. Mr Gurvits' response was that the charge was for a survey and that it is not necessary to consult in respect of professional fees. The Applicants explained that they had not known what "BNO assessment" meant and that there had been a lack of communication on the part of the Eagerstates (which is relevant to the standard of management) but they did not seek to challenge this charge further.

55. It is apparent from the invoice (which was not disclosed to the Applicants prior to the hearing) that this charge is in respect of an electrical survey. We are satisfied on the balance of probabilities that this charge in the sum of £1,141.68 is reasonable and payable.

2021 Door repair £300

56. By email dated 29 April 2021, BML Group who carried out this work state:

"This door is warped beyond repair and will need to be replaced - quote to follow.

We have installed a weatherboard at the bottom of the door."

57. The Tribunal was referred to photographs of the door which do not show it to be warped and the Applicants confirmed that the door currently remains in good working order.

58. The door was replaced in 2019 and we are not satisfied on the balance of probabilities on the basis of the limited evidence before us that further work to the door would have been required in 2021 if the 2019 work had been carried out to a reasonable standard. Accordingly, we find that the sum of £300 claimed under this heading is not payable.

2021 Emergency phone line £48

59. The lessees submit that this charge is not payable under the terms of their leases.

60. The definition of "Service Charge" at Part 7 of the specimen lease includes:

"... (d) Providing any services facilities and amenities or carrying out works or otherwise incurring expenditure which the Landlord reasonably considers expedient or necessary for the general benefit of the whole or any part of the Estate and all or some of Its tenants whether or not the Landlord has agreed or Is otherwise obliged to Incur that expenditure or provide those services facilities or amenities or carry out those works"

61. We accept that an emergency phone line falls within this definition, whether or not there has been an emergency which has necessitated its use during the relevant period.

62. Mr Gurvits stated that Eagerstates pays an annual fee of £10 plus VAT per flat to an external company which provides this service 24 hours a day 365 hours a year so that there is a point of contact for lessees when his office is closed.

63. Mr Gurvits explained that this out of hours service is included in the management fee and this is why it does not appear as a separate charge in the service charge years 2018/19 and 2019/20. However, the annual fee is payable in full in advance and, because Eagerstates ceased to manage the Property approximately 6 months into 2021, the Applicants have been charged £48 in the year 2020/21 as a separate service charge item.

64. On the basis that this out of hours service is included within the management fee, the Applicants paid approximately half of the annual charge through payment of half of the annual management fee. Accordingly, the Tribunals finds that, of this charge in the sum of £48, the sum of £24 is payable.

Roof Repairs 2019 – 2021

65. The Applicants have agreed to pay the Respondent the sum of £3,000 in respect of successful roof repairs which were carried out in 2021 by a contractor nominated by the Applicants. The Applicants have also agreed to pay the Respondent a fee in the sum of £300 for arranging this work.

66. Significant sums were incurred by the Respondent in connection with work to the roof before this successful repair work was carried out. Mr Gurvits stated that the leak was not easy to pinpoint or to stop and that it may ultimately have been remedied by a combination of all the work carried out. He did not, however, challenge the Applicants' case that the leak continued unabated for 3 years until repairs were undertaken by the Applicants' nominated contractor.

67. We accept, in principle, that the cause of water ingress may be difficult to identify. However, we have not had sight of a surveyor's report which the Respondent relied upon in carrying out work which was undertaken prior to the successful 2021 roof repairs. In the absence of this report, we cannot be satisfied that the surveyor's recommendations were reasonable.

68. There is no detailed explanation for the work carried out prior to 2021 in the form of a witness statement or surveyor's report. On the limited evidence available, we are not satisfied that the costs incurred prior to 2021 in carrying out work which did not finally resolve the problem of water ingress were reasonably incurred.

69. The following sums are claimed in connection with the roof works:

    (i) Surveyor's report 2019 £576;

    (ii) 2019 Roof and balcony works as per section 20 notices £5,382;

    (iii) 2019 Administration fee for the roof works £968.76;

    (iv) 2021 Roof works £5,390 (it is unclear why this charge was greater than the agreed sum of £3,300 inclusive of the management fee).

70. Of these sums claimed in connection with the roof works, the Tribunal finds that no more than £3,300 in total is payable by the Applicants.

Insurance claim from roof works

71. Ms Monaghan, whose bedroom was affected by the water penetration, moved out of Flat 2 for a year due to the water ingress through the roof of the Property. She stated that Mr Gurvits informed her that an insurance claim had been made and she therefore assumed that the cost of the roof works would be recovered from the insurance company but this has not happened.

72. Mr Gurvits informed the Tribunal that he raised an insurance claim in November 2019 and that the claim is "in the system". He also noted that it took until 2021 to finally resolve the problem of the water ingress. The Tribunal was not referred to any correspondence from Eagerstates following up the insurance claim which was made 3 years ago and the Applicants stated that they were not provided with any information concerning an insurance claim when they took over the Right to Manage. In our view this is a management issue.

73. Ms Monaghan sought to argue that her flat was unusable when she was out of occupation and that her service charge should therefore have been suspended in accordance with Part 5 of her lease. This argument was not set out in the Scott Schedule and Mr Gurvits was therefore not on notice that the habitability of Flat 2 might be in issue. On the Tribunal pointing this out, Ms Monaghan very fairly did not seek to pursue the point.

2020 Water testing to locate leak

74. These charges relate to the flooding of a balcony with a view to ascertaining the source of water ingress. This work was carried out by the Respondent in two stages. The charge in respect of stage 1 is £900 and the charge in respect of stage 2 is £660.

75. The Applicants state:

"The tenants believe that the landlord has split this work and the work listed in the line below (2020 Water testing to locate leak (stage 2)) into two separate invoices to avoid reaching the threshold of whether a Section 20 notice must be issued. The precedent set by the Francis v Phillips case should be considered here. The Court of Appeal suggested (at paragraph 36) four factors which are likely to be relevant in determining whether works should be considered discrete or not: (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character from, or have no connection with, each other.

The two invoices relating to water testing are adjoining in nature, evidenced in the fact that the terms 'stage 1' and 'stage 2' are used. The works should also be considered as a bundle because they were completed by the same contractors on the same day."

76. Mr Gurvits stated that stage 1 was flooding the balcony up to a certain point and that stage 2 concerned the second half of the balcony which was flooded the following day. He could not explain why the invoices for flooding two halves of the balcony were different in amount. The

Tribunal was referred to the floor plan showing the approximate size of the balcony.

77. The Tribunal accepts the Applicants' submission that stage 1 and stage 2 are not discrete items of work. The balcony is small and we do not consider it likely to have been practical to flood the balcony in two stages because water on one half of the balcony is likely to spread to the other half. In any event, the work was carried out to adjoining areas of balcony by the same contractors on either the same day (on the Applicant's account) or on two consecutive days. The works were connected and similar in character.

78. The total cost of this work was £1,560 and, no section 20 consultation having been carried out, we find that the sum payable by the lessee or lessees of each flat is limited to £250.

2020 Fence works in order to rectify leak from passage way £1,437.60

79. The Applicants state that this work is above the section 20 threshold but that no statutory consultation was carried out. Mr Gurvits does not contend that a section 20 consultation was carried out. The Tribunal accepts the Applicants case. Accordingly, we find that, of the charge in the sum of £1,437.60, the sum payable by the lessee or lessees of each flat is limited to £250.

2020 Internal decorating to flat 2 due to water damage £676.80

80. This internal decoration work was carried out on the same day as the work to rectify the leak without allowing any time for the damaged area to dry out before it was redecorated. Accordingly, a week later the mould and damp staining returned.

81. Mr Gurvits stated that Eagerstates did not instruct the contractor to carry out the work in this manner. Although he stated that he did query why the decoration was carried out on the same day as the remedial work, the sum claimed in the invoice was then charged to the service charge account.

82. The Tribunal finds that this work was not carried out to a reasonable standard. We are not satisfied on the evidence before us that any benefit was derived from redecorating this damp area. We therefore find that, of the charge in the sum of £676.80, nothing is payable by the Applicants under this heading.

83. Having found that nothing is payable in respect of this work, it is not necessary for the Tribunal to consider the Applicants' alternative

argument that this work should be considered together with the fence works.

Late payment fees charged to the lessee of Flat 1

84. Ms Lawal explained that she accidentally missed one service charge payment when she was working from home due to the covid 19 pandemic. She stated that she apologised and paid the sum due together with interest. However, she has been charged late payment fees of in excess of £2,000. Whilst Ms Lawal has paid a proportion of these administration charges, it is clear that their reasonableness is disputed and that these charges are not agreed.

85. Mr Lawal states that she only received one solicitors' letter before she made payment. This account was not challenged by Mr Gurvits. No copy of the solicitor's letter was provided in support of the level of charges and Mr Gurvits did not contend that the chasing of the one missed late payment was a complex matter.

86. Preparing and sending out one standard late payment reminder letter is unlikely to take a solicitor a significant period of time and, in our view, the administration charges for chasing the one missed payment are unreasonably high. In all the circumstances, we find that a reasonable late payment fee would be £75. The fees which Ms Lawal has paid arising out of her late payment which are in excess of £75 should therefore be credited to her.

Management fees

87. Having considered all the matters set out above, the Tribunal finds that the management of the Property was not carried out to a reasonable standard. We find that the management fee falls to be reduced to £500 per flat for the period under consideration (approximately £200 per year over a two and a half year period).

88. The matters which we have taken into account in reaching this determination include:

    (i) The charges which we have found were not reasonably incurred;

    (ii) The failure to obtain insurance at a reasonable cost;

    (iii) The insufficiently clear communication concerning the meaning of the repair fund and concerning the nature of charges such as the BNO assessment;

(iv) The lack of evidence that Eagerstates has sought to recover monies from the lessees of 23 London Road pursuant to the Deed;

(v) The lack of evidence that an insurance claim made by Eagerstates in November 2019 has been followed up;

(vi) Eagerstates' failure to monitor contractors so to ensure that Flat 2 was allowed to dry out before it was repainted or to ensure that the Applicants were not charged for ineffective work;

(vii) The unreasonably high level of late payment fees charged to Ms Lawal.

Applications concerning costs

89. Mr Gurvits informed the Tribunal that the Respondent would not seek to require the Applicants to pay the Respondent's cost of these proceedings and he had no objection to orders under section 20C of the 1985 Act or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 being made.

90. The Tribunal determines that, in all the circumstances, it is just and equitable to make (i) an order under section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred by the Respondent 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) an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants' liability, if any, to pay an administration charge in respect of the Respondent's costs of these proceedings.

91. Further, having taken into account the findings set out above and the Respondent's failure to comply with the Tribunal's Directions, the Tribunal makes an order pursuant to rule 13(2) of the 2013 Rules requiring the Respondent to reimburse the Tribunal fees paid by the Applicants within 28 days of the date of this decision.

Name: Judge N Hawkes **Date:** 7 December 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 of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

(e) the manner in which it is payable.

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

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

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

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

Section 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 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.

Schedule 11 to the Commonhold and Leasehold Reform Act 2002

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.

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

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).

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.