FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KA/LSC/2021/0051**
HMCTS code (audio, video, paper)	**:**	**V: CVPREMOTE**
Property	**:**	**Napier House, 17-21 Napier Road Luton LU1 1DU**
Applicants	**:**	**1. Joao Silva (No. 4)** **2. Samyra Rashid (No. 23)** **3. Chu Ng (No. 29)** **4. Shabbir Badami and Yasmin Kanwal (Nos. 2 and 30)** **5. Amarjit Singh (No. 20)** **6. Ashish Investments Limited (Nos. 21 and 26)** **7. RSM Property Limited (Nos. 12 and 19)**
Respondent	**:**	**Assethold Limited**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge David Wyatt** **Mr R Thomas MRICS**
Date of decision	**:**	**8 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are those described in paragraphs 4 to 9 below. We have noted the contents.

Decisions of the tribunal

(1) The tribunal determines that:

a. the service charges said to have become payable before 6 May 2021 to the previous landlord (described as "*Amount outstanding from previous account*", or the like, in the relevant demands from the Respondent) are not payable by the Applicants to the Respondent; and

b. the following service charges are (or, to the extent the relevant Applicants have already paid them, were) payable by the relevant Applicants to the Respondent as the second half of the estimated service charges for 2021:

Flat	**Amount payable (£)**
2	404.39
4	603.56
12	606.78
19	624.48
20	708.18
21	606.78
23	603.56
26	643.80
29	1,195.85
30	865.91

(2) The tribunal orders under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**") that any 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 no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**").

(4) The tribunal orders the Respondent to pay £300 to the Applicants, to reimburse the tribunal application and hearing fees paid by them.

Reasons

Applications

1. The Applicants sought determinations under section 27A of the 1985 Act as to whether certain service charges from 2019 onwards were payable by them. Extracts from the relevant legal provisions are set out in the Appendix to this decision. The Applicants also sought orders: (a) to limit any recovery of the Respondent's costs of the proceedings through the service charge, under section 20C of the 1985 Act; and (b) to reduce/extinguish their liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.

2. The Property was described as an office block converted (apparently in about 2018) into 30 residential flats. The sample lease provided was granted in 2019, as described below. The freeholder at that time was Via Project 3 Limited. On 6 May 2021, the Respondent purchased the freehold from that company. On 26 May 2021, the Respondent demanded service charges said to be outstanding "*from previous account*", and estimated service charges for the period from July to December 2021, as detailed below. On 14 July 2021, the initial Applicants made their application to the tribunal to determine which of these service charges were payable to the Respondent.

Procedural history

3. On 13 August 2021, a procedural judge gave case management directions setting out the steps to be taken by the parties to prepare for the hearing of this matter, with the hearing bundles to be prepared by the Respondent. The first direction required the Respondent to send to the Applicants and the tribunal office a clear explanation of the "*period and works etc*" covered by the claimed service charges together with all relevant service charge accounts and estimates for the years in dispute, all demands for payment and details of any payments made.

4. The Respondent failed to do so. Their managing agents (Eagerstates Ltd) said the dispute related to arrears showing on the account when they had taken over management of the Property. They said each flat had been provided with a copy of the statement received from the previous management company which: "*details these quite clearly*". On 22 September 2021, the procedural judge added three parties to the proceedings as additional Applicants (the leaseholders of Flats 12, 19, 20, 21 and 26). The procedural judge warned the Respondent of potential sanctions under Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**").

5. On 27 September 2021, Eagerstates produced a copy spreadsheet described as a completion statement made up to 8 April 2021, apparently from the Respondent's purchase of the freehold, and a copy invoice to Mr Silva for Flat 4 in the sum of £238.76 for "*Buildings Insurance Contribution from 13/09/2019 to 13/03/2021*". They said these "arrears" details had been provided by the previous agents and they did not have much more information. They said it was not for them to deal with historic arrears. On 30 September 2021, a procedural judge wrote to the parties, observing that the leaseholders were seeking determinations in respect of the demands for the latter part of 2021, in addition to the earlier sums described as being outstanding from a previous account. The judge warned that, since the Respondent was seeking to recover "historic arrears" from leaseholders, they should on their purchase have obtained from the previous landlord the requisite documents to support their claim, including copies of the management files and any other documents needed to substantiate any claims they might wish to make for sums relating to the period before they purchased the freehold.

6. The Respondent was given until 8 October 2021 to provide the outstanding evidence/information and Land Registry entries for the freehold title. The Applicants provided some additional information by e-mail on 29 September 2021. On 8 October 2021, the Respondent sent an e-mail attaching the same documents as had been provided previously and a small number of other historical documents, which we have reviewed. On 17 November 2021, the procedural judge decided not to bar the Respondent from defending the application, but warned that in the absence of material supporting the demand for the alleged arrears the Respondent might be unlikely to succeed in obtaining a determination that they were payable. They directed that the matter be set down for a hearing and reminded the Respondent they had been directed to produce the bundles for the hearing. Queries from the Respondent about this were answered by the Applicants.

7. On 2 December 2021, the parties were notified that the remote hearing would be at 10am on 20 January 2022. On 4 January 2022, joining instructions were sent to the parties for the video hearing. When the hearing bundles were not delivered by 6 January 2022, as had been directed, the tribunal office wrote to the Respondent on 7 January 2022. On 10 January 2022, a warning letter was sent to the Respondent. On 12 January 2022, Eagerstates Ltd replied apologising for the delay and saying they would "endeavour" to deliver the bundles by Monday morning. On 13 January 2022, a final warning was sent to the Respondent, noting the tribunal office would need to send the bundles out to the members appointed to hear the matter in good time before the hearing and it would be a matter for them to decide whether to bar the Respondent from taking further part in the proceedings. On 18 January 2022, the Applicants produced a copy letter from Mr Silva's conveyancing solicitors.

8. On 19 January 2022, when the bundles still had not been delivered, the tribunal file was referred to Judge David Wyatt, who reviewed this and wrote to the parties to identify the documents which might be referred to at the hearing. The parties were encouraged to ensure they were familiar with the relevant law, particularly section 3(3) and section 23(1) of the Landlord and Tenant (Covenants) Act 1995 (the "**1995 Act**"), and prepare any submissions they might wish to make at the hearing about the effect of section 23 on the claims said to have been in existence at the date of the Respondent's purchase of the freehold, in view of the absence of any case or evidence from the Respondent that the rights in respect of such previous claims were expressly assigned by the previous landlord to the Respondent. The parties were also warned of basic information (which should already have been confirmed by the documents the Respondent had been directed to disclose) which they should provide in advance of the hearing, or would be asked at the hearing to confirm.

9. At the hearing on 20 January 2022, the Applicants were represented by Mr Silva. Family members of some of the Applicants also attended the hearing. The Respondent was represented by Mr Ronni Gurvits of Eagerstates. At the start of the hearing, the Applicants sent an e-mail providing (as far as they could) the basic outstanding information. During the hearing, Mr Gurvits explained that the Respondent had adopted the service charge proportions used by the previous managing agents. Most of the flats were charged different proportions of internal and external costs. He sent by e-mail a print of the relevant percentages, which was discussed during the hearing.

Leases

10. The sample lease provided, of Flat 2, is dated 13 December 2019. We take it all the relevant leases are in substantially the same relevant terms; the Landlord covenanted (in paragraph 5 of Schedule 6 to the lease) to ensure every lease of the flats granted by the Landlord for an original term of over 21 years is in substantially the same form as this lease. The parties agreed that all the leases were granted during or after 2018.

11. Under the terms of the lease, the **Service Charge** is a fair and reasonable proportion of the Service Costs listed in Part 2 of Schedule 7 to the lease. These do not refer to ordinary costs of insurance (only costs of work required by insurers, or the like). By paragraph 4 of Schedule 6, before the start of each Service Charge Year, the Landlord shall prepare and send the Tenant an estimate of the Service Costs for that Service Charge Year and a statement of the estimated Service Charge for that Service Charge Year. As soon as reasonably practicable after the end of each Service Charge Year, the Landlord shall prepare and send to the Tenant a certificate showing the Service Costs and the Service Charge for that Service Charge Year. The certificate shall be in accordance with service charge accounts prepared and audited by the Landlord's independent accountants. In paragraph 2 of Schedule 4, the Tenant

covenants to pay the estimated Service Charge for each Service Charge Year (by default, each year from 1 January) in two equal instalments on the Service Charge Payment Dates (1 January and 1 July every year). If the Landlord's estimate of the Service Charge is less than the actual Service Charge, the Tenant shall pay the difference when demanded. By clause 2.2, the Tenant's obligations to pay the estimated and actual Service Charge for the Service Charge Year current at the date of the lease is limited to an apportioned part of those amounts, calculated on a daily basis from the date of the lease to the end of the Service Charge Year.

12. The **Insurance Rent** is a fair and reasonable proportion of the cost of any premiums (including any insurance premium tax) that the Landlord expends, and any fees and other expenses that the Landlord reasonably incurs, in effecting and maintaining insurance of the Building in accordance with its obligations in paragraph 2 of Schedule 6, including any professional fees for carrying out any insurance valuation of the Reinstatement Cost and the cost of insuring the Property against three years loss of Rent. Paragraph 2.2 of Schedule 6 requires the Landlord to serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the Building, stating the date by which the premium is payable to the insurers and the Insurance Rent payable by the Tenant, how it has been calculated and the date on which it is payable. In paragraph 3 of Schedule 4, the Tenant covenants to pay the Insurance Rent demanded by the Landlord under paragraph 2 of Schedule 6.

Service charges in dispute

13. On 1 June 2020, Mr Silva completed the purchase of his lease of Flat 4 from the previous landlord, Via Project 3 Limited. On 6 May 2021, the Respondent purchased the freehold title. On 26 May 2021, Eagerstates demanded on behalf of the Respondent the following sums from each Applicant. Where copies of the relevant demands were not provided, we have in the third column used (with the agreement of the Applicants) the figures provided by Mr Gurvits at the hearing.

Flat	**"Amount outstanding from previous account" (£)**	**"Service Charge June-December 2021" (£)**
2	855.16 (Applicants say they paid all demands received, including Jan to June 2021)	808.78 (Applicants say they paid 404.39 (50%) on 24 June 21 to Eagerstates for July to Dec 21)
4	2,677.08 (Applicants say they paid all demands, to the end of 2020)	1,207.12 (Applicants say they agree/paid this for all of 2021; 50% = 603.56 for July to Dec 21)
12	[688.76]	1,213.56 (Applicants offer 50%)

19	[352.03]	1,248.96 (Applicants offer 50%)
20	[238.76 for insurance 13/09/2019 to 13/03/2021 and 108.27 "arrears"; Applicants say they paid all demands, including Jan to June 2021]	1,416.35 (Applicants offer 50%)
21	[738.76]	1,213.56 (Applicants offer 50%)
23	1,860.52 (Applicants say they paid all demands, including for Jan to June 21)	1,207.12 (Applicants offer 50%)
26	[850.87]	1,287.59 (Applicants offer 50%)
29	488.76 (Applicants say they paid all demands, including for Jan to June 21)	2,391.70 (Applicants offer 50%)
30	397.16 (Applicants say they paid all demands, including for Jan to June 21)	1,731.81 (Applicants say they paid 865.91 (50%) on 24 June 21 to Eagerstates for July to Dec 21)

Previous claims

14. Each of the relevant leases is a 'new tenancy' for the purposes of the 1995 Act. Accordingly, sections 78/79 and 141/142 of the Law of Property Act 1925 do not apply in relation to them. By section 3(3) of the 1995 Act, as from the assignment of the reversion, the Respondent became entitled to the benefit of the tenant covenants of the tenancy. By section 23(1), an assignee of the reversion who becomes entitled to the benefit of a tenant's covenant by virtue of the 1995 Act does not by virtue of the Act have any rights under the covenant in relation to any time falling before the assignment. By section 23(2), this does not preclude any such rights being expressly assigned to the person in question.

15. In relation to the sums demanded under the second column of the table above, the Applicants disputed liability. Most of them said they had paid all charges demanded by the managing agents acting for the previous landlord, including some demands for estimated charges for the first half of 2021, as outlined in the table. They said they had not received the purported insurance demands said to have been issued in February 2021. They said the "completion statement" spreadsheet and other limited documents produced by the Respondent were difficult to follow and the Respondent had not demonstrated that it was entitled to any such charges. Mr Gurvits told us the Respondent had purchased the freehold on 6 May 2021. He said the Respondent had now agreed to "*wipe*" the charges claimed in respect of the period prior to their management and

"*start at zero*". He did not concede that the effect of the 1995 Act was that no such charges were payable. He said the Respondent now agreed these sums were not payable by the Applicants to the Respondent and did not wish to make submissions about the effect of the 1995 Act. The Respondent was not contending that it had entered into a deed of assignment or had the benefit of any other express assignment by the previous landlord of claims in existence at the date of completion of the Respondent's purchase of the freehold.

Conclusion

16. The latest demands disclosed by the Respondent were the insurance demands noted above (from Via Project 3 Limited dated 26 February 2021 for £238.76 per flat as their "*Buildings Insurance Contribution from 13/09/2019 to 13/03/2021*"). These would (if they were served, complied with the terms of the leases and included the requisite summary of rights and obligations, all of which appears doubtful) have become payable before 6 May 2021. On the case and evidence provided by the parties, we are satisfied that the right to sue for any breaches of covenant in existence at the date of assignment of the reversion remains with the previous landlord and did not pass to the Respondent. The relevant sums demanded by the Respondent are not payable by the Applicants.

Estimated service charges for (July to December) 2021

17. Mr Gurvits explained that, after the Respondent's purchase of the freehold on 6 May 2021, Eagerstates had produced a new service charge budget. Despite the repeated directions and further prompt the day before the hearing, the Respondent had failed to produce a copy. At the hearing, Mr Gurvits told us the budget comprised £14,300 for external costs (or £23,300, if insurance was included) and £16,540 for internal costs. At the hearing, we checked that applying the Respondent's service charge proportions for Flat 4 to the suggested external costs of £23,300 and the suggested internal costs of £16,540 produced the total figure which had been demanded from Mr Silva. When asked, Mr Gurvits said these budget figures included £6,240 for a management fee in respect of the external costs and £4,500 for a management fee in respect of the internal costs. Accountancy fees were estimated separately, in addition to these estimated management fees. Mr Gurvits said the estimated charges included such matters as lift maintenance and a reserve fund contribution. He said that when the purchase was completed no service charge monies were handed over by the previous landlord, only statements indicating arrears totalling some £26,000, and it seemed initially that no money had been demanded for 2021. The handover documents had been unclear and he felt it had been necessary to issue a new budget with all this in mind.

18. The Applicants submitted that half of the estimated service charge demanded by the Respondent from each of them for 2021 was payable, but said the balance was not. They said the (apparently belated) estimate was appropriate for a year, not six months. They said the Respondent had after issuing the demands changed them to refer to January to December 2021. Mr Gurvits confirmed that was true, but the Respondent had later corrected this "back" to confirm the estimate and demand was for the six months from July to December 2021. He said the demand on 26 May 2021 should have sufficed to make a service charge payable in respect of the estimated insurance costs, but could not explain how this fitted with the terms of the lease. As set out above, these do not appear to provide for collection of general estimated insurance costs. In essence, they require the leaseholder to pay "Insurance Rent" which has been demanded by notice specifying the premium payable and other matters required by paragraph 2.2 of Schedule 6. Ordinary insurance costs do not appear to be included in the separate machinery for payment of estimated and final "Service Charges" (as defined in the lease). When it was put to Mr Gurvits that, even apart from this, the estimated service charge budget seems more appropriate for 12 rather than six months, he accepted it "*might be on the higher side*". He observed that budgeting is a skill and told us that in view of the Respondent's difficulties on taking over the building figures were demanded which were higher than those in accounts, prepared recently, of the actual costs.

Conclusion

19. In view of the Respondent's failure to disclose the requisite documents, together with the evidence it has given, we are satisfied that only the amounts proposed by the Applicants (i.e. half the relevant sums demanded) are payable to the Respondent as estimated service charges for 2021. But for their agreement, it may be that sums based on the Respondent's budget would not have been payable at all. The Respondent failed to provide a copy of their own budget (or any budget produced by the previous landlord in 2020 for 2021, as expected under the machinery in the lease for estimated Service Charges, as set out above). The few details disclosed by the Respondent generally support the Applicants' case that the Service Charge budget is about twice what it should be for six months (or the second instalment of the service charge for the year). We put it to Mr Gurvits that the total estimated management fees of £10,740 (which would equate to £358 per flat if it were allocated equally between the 30 flats) seemed high for 12 months, let alone six. Mr Gurvits agreed. Again, he said, the final costs were less than the estimates.

Section 20C, paragraph 5A and reimbursement of tribunal fees

20. Mr Gurvits confirmed the Respondent had no real objection to the making of an order under section 20C of the 1985 Act, since the

Respondent would not be seeking to recover the costs of these proceedings through the service charge. In the circumstances, and in view of the matters summarised in this decision, we have decided that it would be just and equitable to make an order under section 20C of the 1985 Act to ensure there is no doubt about this. None of the parties could point to any administration charge which was being proposed or might under the terms of the leases be made in respect of the costs of these proceedings. Accordingly, we make no order under paragraph 5A of Schedule 11 to the 2002 Act. However, this does not preclude any Applicant from applying for such an order if the Respondent attempts to make such a charge in future.

21. Under Rule 13, we have a general discretion to order reimbursement of tribunal fees. Mr Gurvits opposed this, saying the dispute could have been resolved by agreement. He said he had previously discussed the matter with the Applicants and had agreed with Mr Silva to put the arrears charges in his case to "*one side*". He said the Applicants had been hasty and the Respondent had tried to be reasonable. In relation to the Respondent's failure to disclose documents as directed, Mr Gurvits said he had not understood that the dispute also related to the estimated charges demanded for the latter part of 2021. He could not explain why the Respondent had not understood the repeated directions which made this clear. Nor did he explain why the Respondent had failed to deliver the hearing bundles. He said he could only apologise. Mr Silva submitted that the Respondent had demanded sums to which it was not entitled, other than those promptly agreed by the Applicants, and had failed to justify them even when directed to do so. He had discussed the matter with Mr Gurvits and had thought there was agreement the previous charges were not payable to the Respondent, only to find they had been reserved and were referred to in statements of account from the Respondent. He said the Applicants had sought to engage with the Respondent. He said they had made their application only when this was not productive and some of them had been threatened with debt collectors/county court proceedings. He said the Respondent had only made any real attempts to settle the matter by agreement in the few days leading up to the hearing (after the hearing fee had to be paid). Since that was so late, it was reasonable for the Applicants to ask for a determination from the tribunal rather than finding that the Respondent had not understood an agreement to mean what the Applicants had understood it to mean.

22. We do not have copies of much of the correspondence between the parties, but generally we accept Mr Silva's submissions. In any event, the Respondent's failure to comply with repeated directions has taken up a disproportionate share of the tribunal's resources and has meant that less can be determined in this decision than might otherwise have been possible. In the circumstances, we have decided to order the Respondent to reimburse the £100 application fee and £200 hearing fee paid by the Applicants.

23. Under Rule 13, in these proceedings, we have no power to make any other order in respect of costs unless this is for wasted costs or a party has acted unreasonably in bringing, conducting or defending the proceedings. That is a high bar. In view of the limited copy correspondence provided, we cannot comment further and we do not know what (if any) costs the Applicants have incurred apart from the tribunal fees. If the Applicants wish to apply for an order in respect of any costs in relation to these proceedings, they will need to do so within 28 days after the date on which this decision was sent to them (as set out in Rule 13(4)), giving full details of any costs they have incurred. We should not be taken to be encouraging or discouraging this; the costs of making such an application (and providing bundles of the relevant correspondence and other documents pursuant to directions which would then be given) might exceed any costs incurred so far in these proceedings. In any event, we have set matters out in some detail in the event there are any further proceedings between the parties. This may help to avoid repetition and it may be appropriate to refer to this decision if the Respondent does not co-operate or comply with directions in any relevant future proceedings.

24. The parties are encouraged to co-operate to seek to resolve any dispute about balancing service charge demands (which will no doubt be issued in due course following final accounts for 2021, if they have not already) without the need for further proceedings. The Applicants may wish to focus on taking independent legal advice on their position in relation to this and any options available to leaseholders in relation to the future management of the building.

Name: Judge David Wyatt **Date:** 8 February 2022

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 (extracts)

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.