FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2021/0267** **LON/00AY/LAC/2021/0021**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Corben Mews, 46-48 Clyston St, London SW8 4TA**
Applicants	**:**	**The lessees of Flats 1 -14 and 17 and 18 Corben Mews.**
Representative	**:**	**Gregsons solicitors**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen solicitors Limited**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and liability to pay administration charges under Schedule 11 Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge Pittaway** **Mrs S Redmond MRICS**
Date of hearing	**:**	**30 March 2022**
Date of decision	**:**	**30 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected 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 all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were;

1. The bundle of documents relating to the s27A application and the Schedule 10 application (977 pages)
2. The applicant's skeleton argument dated 28 March 2022 (5 pages)
3. The respondent's opening submissions dated 30 March 2022 (15 pages)
4. The applicant's closing submissions (16 pages)

The tribunal also had before it The bundle of documents relating to the Rule 13 costs application (147 pages)

Ms Adam of Gregsons represented the applicants at the hearing and Mr Loveday of counsel represented the respondent.

The tribunal heard evidence from Ms Adam, as tenant of Flat 3, Dr Flint (Flat 5) and Ms Nethersole (the occupant of Flat 3).

There was no evidence from the respondent before the tribunal.

Ms Ripley (Flat 6), Mr Barden (Flat 12) Mr and Mrs Mehta (Flat 2), Ms Jewitt (Flat 5) and Ms Scott of Scott Cohen solicitors also joined the hearing.

Decisions of the tribunal

(1) The accounts for the years to 25 December 2019, 25 December 2020 and 25 December 2021 have been certified and audited by Martin + Heller in compliance with the leases.

(2) That the certification and audit in each case is dated prior to the end date of the period to which it relates does not prevent it relating to a twelve month period, as required by the leases.

(3) There is provision in the leases for the tenants to pay a sum on account of service charge but the tenants are not liable to pay the estimated service charges actually demanded for any of the years in question.

(4) The tribunal had no jurisdiction to determine issues in connection with the 2020/2021 service charge to the extent that these matters relate to the 'waking watch' costs incurred in that year, or costs ancillary thereto.

(5) The tribunal makes the determinations as to liability to pay and reasonableness of the other actual service charge costs demanded as set out under the various headings in this Decision

(6) 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.

(7) The tribunal makes no order for Rule 13 costs.

The applications

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**") as to the amount of service charges and a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") as to administration charges payable by the applicant in respect of the service charge years 2018/19, 2019/20, 2020/21 and 2021/22, in each case with attendant applications under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act.

2. The applicant also applied for costs under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

The background

3. The property which is the subject of this application is described in Ms Adam's witness statement as comprising two blocks. Block A comprises flats 1 to 6 and flat 18 (seven flats). Block B comprises flats 7 to 14 and flat 17 (nine flats).

4. 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.

5. The tribunal had before it two specimen leases, those of flats 3 and 10. In general terms each requires 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 issues

6. The bundle before the tribunal contained a Scott Schedule which identified the issues before the tribunal to be

(i) Whether the service charge accounts and demands for all the years in question complied with the requirements of the leases.

(ii) Whether the insurance premium charged for 2019 was a double charge of the charge levied in 2018 and was terrorism incorrectly charged separately when it was included in the general premium. Was the insurance valuation undertaken in 2020 reasonable.

(iii) The liability to pay and/or reasonableness of the charges levied for

- Cleaning in the years 2019,2020 and 2021
- Window cleaning in 2020 and 2021
- BNO London Ltd
- Various fire safety works and in relation to EWS1
- Works to drains in 2020 and 2021
- JMC maintenance schedule incurred in 2020
- Gate maintenance contract in 2019 and gate works in 2020
- D & S Floors invoice in 2021 relating to internal works to Flat 10
- Accounting costs in 2019, 2020 and 2021.
- Management costs for 5 months in 2019 and 2020 and 2021, including costs charged in connection with s20 fees relating to Block B in 20201 and charge for providing a key fob to flat 8.
- Various administration charges charged to individual flats.

7. In addition the applicant made a claim for costs under Rule 13.

8. As there were no submissions before the tribunal in respect of the Rule 13 application the tribunal invited representations from the respondent by 14 April and from the applicant by 21 April, which have been received.

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Reasons for the tribunal's decisions

Compliance with lease terms

10. The applicant submitted that none of the service charge demands are for a twelve month period, that they include demands for estimated

service charges and they are not audited. Ms Adams submits that this makes the demands invalid. Ms Adams further submits that insofar as the demands dated 1 June 2021 are concerned the tribunal, in its previous decision, found that the demands issued on that date were invalid.

11. Mr Loveday submitted that the respondent had served annual accounts '*each year for each 12 month period between the accounting periods.*' In his submission the accounts were computed for a period of twelve months and it was not a matter of concern that the certificates pre-dated 25 December in each year, which he submitted was the correct date to which to calculate each service charge period. Any other dates suggested in the certificates he submitted were discrepancies or typographical errors which were not fatal to to the certificates. He submitted that the certificates from the auditors Martin + Heller were sufficient to fulfil the lease requirements for certificates and audited accounts. He submitted that it is a fallacy that audit/ certification requirements in leases are invariably conditions precedent to liability, referring the tribunal to cases summarised in Service Charges & Management (5th Ed) at paras 2-41 to 2-43.

12. The bundle provided to the tribunal contains copies of the leases of flats In the absence of any indication to the contrary the tribunal have proceeded on the basis that the leases of flats 1 to 14 are in similar terms (save as to percentages of service charge payable) to those set out in the lease of flat 3. The actual leases of flats 17 and 18 have not yet been granted but the agreement is that they should be granted on terms similar to those of the existing flat leases .

13. Clause 4(6) of the lease of flat 3 contains a covenant by the tenant to pay specified percentages of the costs to the landlord in complying with its obligations in respect of the Estate and the Building, '*such payments to be collected and payable as provided by Clause 5 hereof*'.

14. Clause 5(1) of the lease contemplates a payment on account of service charge of £500 p.a. (the '**maintenance charge**').

15. Clause 5(3) provides,

'*If the expenditure incurred by the Landlord in any accounting period of twelve months in carrying out its obligations under Clause 6 hereof (hereinafter called "the annual cost") exceeds the aggregate maintenance charge payable (or deemed to be payable) on account as aforesaid by the tenants of all the flats in the Building or on the Estate in the accounting period in question (hereinafter called the "annual contribution") and together with any unexpended surplus as hereinafter mentioned then a certificate of the amount by which the annual cost exceeds the annual contribution or any such unexpended surplus will be served upon the Tenant by the Landlord or its Agent*

with audited accounts in support thereof and then the Tenant shall pay to the Landlord within twenty eight days of the service of such certificate……such proportion of the annual cost as set out in clause 4(6) hereof less the maintenance charge (hereinafter called the "excess contribution")…..'

16. Clause 5(4)(d) entitles the landlord to increase the maintenance charge by a sum equal to the average of the excess contribution for the previous year, which may be charged on an annual, bi-annual or quarterly basis.

17. The tribunal has had regard to the above provisions in reaching its decisions as to the compliance of the accounts provided with the terms of the leases.

18. The bundle provided to the tribunal contains

- Service charge accounts for both Block A and B for the period December 2018/2019 (Bundle pp. 272-281). These contain both an 'Accurate Service charge account' for the period December 2018/2019 and estimated service charge for the period December 2019/2020. The service charge account for the period ending 25 December 2019 is certified by Martin & Heller on 2 December 2019.
- Service charge accounts for both Block A and B for the period December 2019/2020 (Bundle pp. 282-291). These contain both an 'Accurate Service charge account' for the period December 2019/2020 and estimated service charge stated to be for the period December 2020/2021, with the estimated insurance premium charge stated to be from June 2021/2022. The service charge account for the period ending 25 December 2020 was certified by Martin & Heller on 7 December 2020.
- Service charge accounts for Blocks A and B dated 1 June 2021 for the period December 2020 to 1 June 2021 (Bundle pp. 292-303). The insurance premium in the 'Accurate service charge account' is stated to be for the period June 2020 to June 2021. The estimated service charge account is stated to be for the period December 2020/2021 with the estimated insurance charge being for the period July 2021/22. The service charge account for the period ending 1 June 2021 was certified by Martin & Heller on 1 June 2021.
- Service charge accounts for Blocks A and B for the period June 2021 to December 2021 (Bundle pp. 304-). The 'Accurate Service charge account' is stated to be for the period June -December 2021. The estimated service charge account is stated to be for the period December 2021/2022, with the estimated insurance premium being for the period July 2021/2022. There is a certificate from Martin + Heller dated 6 December 2021 certifying expenditure for the period ending 25 December 2021

without stating the start date of the period in question. It does however refer to Accountant's fees for both Dec/June 2021 and June/Dec/2021.

19. The tribunal decision LON/00AY/LSC/2021/0153(the **'previous decision**') contemplated one longer service charge accounting period, without determining its start date in December 2020. At that time it would appear that the respondent contemplated moving the financial year end to 1 June but that does not appear to have happened.

20. The tribunal find that the service charge demands relating to the actual service charge for the years December 2018/2019 and 2019/2020 (referred to by Eagerstates Limited as 'Accurate service charge') included in the bundle were appropriately certified and audited, as evidenced by the certificates from Martin + Heller.

21. The position with regard to the service charge year from December 2020 has been confused by the attempt by the respondent to change the service charge year to run to 1 June in every year. This resulted in it sending out demands, supported by certificates from Martin + Heller dated 1 June 2021 for a period of six months from 25 December 2020 to 1 June 2021. The previous decision determined that demands could not be issued for periods of less than twelve months. It appears that this resulted in the respondent issuing further demands which relate to the year December 2020 to December 2021. A comparison of the certificates from Martin + Heller of 1 June 2021 and 6 December 2021 shows that the items referred to in the June certificates are also certified in the certificates of 6 December 2021. The tribunal has therefore ignored the demands which were for only six months as they do not comply with the terms of the leases nor with the previous decision. The service charge demands issued by the respondent for the period stated to be to 25 December 2021 are appropriately certified and audited.

22. The tribunal does not accept the applicant's submission that the service charge demands were for less than a year because the certificates of Martin +Heller predate the end of the year in question. It is unusual for such certificates to speak to the future beyond the day they are dated but that is what the certificates before the tribunal do. This does not prevent them certifying the expenditure for twelve months. It has the effect that should the respondent have sought to claim expenditure incurred between the date of each certificate and the end of the year to which the certificate speaks it would have been uncertified expenditure for which the applicants would not have been liable.

23. Clause 5(1) of the lease contemplates a payment on account of a maintenance charge of £500 p.a. with clause 5(4)(d) making provision for this sum to be increased if the excess expenditure in the previous

year exceeds this amount. Accordingly the service charge demands may include a demand for a payment on account of service charge.

24. The estimated service charges for 2019/2020, 2020/2021 and 2021/2022 have not been calculated in accordance with the terms of the leases. It is not clear from the evidence before the tribunal how the respondent fixed the individual elements of the sums demanded, but they have not been calculated by reference to the excess charge for the preceding year as required by clause 5(4)(d). The tenants are therefore not liable to pay the estimated charges demanded. The tenants would be liable to pay a maintenance charge if it had been calculated in accordance with the provisions of the leases.

Insurance

25. The applicant is challenging the insurance premiums demanded in 2019 submitting that the premiums of £2,047.37 (Block A) and £2,361.88 (Block B) had already been paid by the tenants in the preceding service charge year, 2018, and that there should be no separate charge for terrorism cover for the Estate. The applicant is also seeking a refund of an element of the premiums for that year on the basis that for an unascertained period there was an overlap between the policy effected by the previous owners (who sold on 28 June 2018) and the policy/policies taken out by the respondent on its purchase.

26. The applicant submits that it is not liable to pay brokers' fees as there is no evidence that these costs were incurred in the absence of supporting invoices.

27. The applicant challenges the reasonableness of the cost of the insurance valuation undertaken in 2020 on the grounds that it was inaccurate (20 units were valued not 18). Ms Adams offered alternative lower quotes for insurance valuations. Ma Adams submitted that the fact that the valuer came from Manchester may have increased the cost.

28. Mr Loveday challenged Ms Adams' submission that the tenants had paid the previous owners the insurance premiums for 2018. He referred the tribunal to a page in the bundle (p.378) headed' Corben Mews service charge actual for period 1st Jan 2018 to 31st Dec 2018' which he submitted sets out the 'Additional costs up to August 2019'. This schedule states that terrorism cover was included in the previous owner's policies without additional premium. As for any overlap Mr Loveday submitted that here was no obvious overlap of insurance. The respondent insured the property from handover.

29. In relation to the broker's fees Mr Loveday referred the tribunal to reference to it in each of the Martin+ Heller certificates as evidence that these costs had been incurred.

30. In cross examination Mr Loveday challenged Ms Adams' assertion that the insurance valuation was inaccurate, submitting that this was nor an area in which she had expertise. He questioned whether her alternative quotes were actually obtained on a 'like-for-like' basis, submitting that the valuation report of JMC was much fuller than a report achievable for her quote of £750.

31. The tribunal queried the basis upon the valuation fee was payable under the terms of the leases. Mr Loveday referred the tribunal to the sweeper clause in the lease which he submitted covered the cost of such valuations.

32. The tribunal notes that the leases provide for the insurance premium 'to be paid on demand'. It does not form part of the service charge expenditure set out in clause 6. There is no evidence before the tribunal of the tenants having paid the previous owner's insurance premium for the year to 31 December 2018, or that it had been demanded from them. Nor is there any evidence before the tribunal that the respondent reimbursed the previous owner with this cost on completion of the sale. The sums are included in the certifications by Martin + Heller dated 2 December 2019, which certification states that the costs certified (which include the contested sums) are 'sufficiently supported by accounts, receipts and other documents which have been produced to us.' This is not evidence of when and to whom the certified sums may have been paid, but in the absence of clear evidence the tribunal have had to proceed on the basis that this suggests that Martin + Heller were satisfied that it had not been paid to the previous owners and was owed to the respondent. The tribunal find the tenants liable to pay a due proportion of the previous owners' insurance premiums.

    The tribunal note from the schedule relied upon by the respondent that the previous owner's insurance appears to have been to August. The certificates show that the respondents insurance starts runs from June to June in every year. It therefore accepts that there appears to have been an overlap. In the absence of any certain figures the tribunal finds that a reasonable charge for the previous insurance would be 80% of the previous premium in each case, namely £1,636 for Block A and £2,105.50 for Block B (These figures are based on the figures given in Heller+ Martin's certificate of £2045.37 for Block A and £2,631.88 for Block B in 2018 and not the slightly different figures given by Ms Adams.) and £454 (80% of the certified sum of £567.51) for terrorism cover.

33. As to the broker's fees in the absence of any evidence to the contrary the tribunal accept the certification by Martin + Heller as evidence that these fees were incurred and the applicants are therefore liable to pay these.

34. The tribunal do not accept Mr Loveday's submission that the costs of insurance valuations are recoverable under a sweeper clause in the leases. The obligation to pay the landlord the insurance premium is an obligation separate to the service charge obligations in Clause 5. 'A fair and reasonable proportion of the premiums paid by the Landlord for the purpose of insuring the Building and Estate' is reserved as rent. There is no reference to the cost of insurance valuations. Clause 5 of the leases requires the tenant to pay the landlord for the expenditure which it incurs under Clause 6. Clause 6 contains a number of provisions that may be the sweeper clause referred to by Mr Loveday but none appear to cover undertaking insurance valuations. Clause 6(8), which refers to the landlord employing contractors agent or servants, is limited to such employment being in connection with the performance by the landlord of its covenants in that clause and clause 6 does not refer to insurance. The tenants are therefore not liable to pay for the cost of the insurance valuation by way of the service charge.

35. If insurance valuations could had been recovered by way of service charge, there is no evidence before the tribunal that the valuation cost was increased by reason of the valuer travelling from Manchester, and in the absence of any evidence to the contrary it would have accepted Mr Loveday's submission that the comparables provided by Ms Adams were not on a like-for-like basis, given the very limited information provided to it as to the basis upon which the comparable quotes were obtained.

Cleaning

36. The tribunal heard evidence from Dr Flint, the occupant of Flat 3, Ms Nethersole and Ms Adams and as to the failure of Dove, who took over the cleaning from a local company called Lola, to provide the cleaning service in accordance with the specification to which it was supposed to clean. Ms Nethersole, who had worked mainly from home since March 2020 did not believe Dove attended more than six times between then and February 2022, not the two weekly visits that it is supposed to make. Ms Nethersole accepted that it was possible that cleaners might attend in anti-social hours. The tribunal was referred to various photographs of the common parts taken in February 2022 as evidence of their general state. In her evidence Dr Flint stated that the photographs showed the typical state of the courtyard. Ms Adams stated that she had contacted Lola who had indicated that they would charge £15 per hour for four hours work a week. In the Scott Schedule Ms Adams submitted that reasonable cleaning charges would be £996 for 2019 and £240 for 2020 and 2021, split between the two blocks.

37. Mr Loveday submitted that invoices provided evidenced the frequency with which Dove attended the property, that no one would clean the property for the level of charge suggested by Ms Adams, and that the

complaints particularised by Ms Nethersole and Dr Flint related to a period outside the service charge years the subject of the application.

38. The existence of invoices is not evidence that the work to which they refer has actually been undertaken. The tribunal accept the evidence of Ms Nethersole and Dr Flint as to the deterioration in the level of service provided and in the circumstances consider that the charges levied by the respondent are unreasonable,. The Tribunal notes that the applicants did not complain to the respondent as to the infrequency of the visits by the cleaners although the tribunal heard evidence from Ms Nethersole that she had complained about the infrequency with which the cigarette 'box' was emptied. It considers that if the work was being undertaken to the level contemplated by the specification, namely visits every two weeks, say for four hours, a charge of £2,000 p.a. would have been reasonable but the evidence does not support that this happened in 2020 and 2021. It therefore finds that a charge of £1,000 p.a. for 2020 and 2021 and a charge of £500 for August to December 2019 to be reasonable.

Window cleaning

39. Ms Adams submitted that the flat windows are demised by the leases and the cost of cleaning them does not form part of the service charge.

40. Mr Loveday submitted that the cost was recoverable as the landlord is under an obligation to maintain the exterior of the premises.

41. The windows within the flats are demised to the tenants and the respondent did not dispute this. The tenant's repairing obligation expressly refers to the windows, whereas the landlord's obligation does not. There was no suggestion by the landlord that the cleaning was undertaken because the tenants were in breach of their obligations in relation to the windows. The tribunal therefore determines that the tenants are not liable for the cost of cleaning the windows in the flats as a service charge cost.

It is noted that there are three communal windows and that the cost of cleaning the interior of these is included in the cleaning specification. There is no estimate for this work before the tribunal. It finds that the annual cost of cleaning the exterior of the communal windows, say quarterly, is likely to be in the region of £80 +VAT, and it is reasonable for the respondent to recover this sum from the applicants in each service charge year in question.

BNO London Limited

42. Ms Adams submitted that the cost of £3000 charged for BNO's standard audit report was a charge for an unnecessary audit. Ms Adams

submitted that such an audit should only be necessary where the building is old or there are problems with the electricity supply, which is not the case with this property. Ms Adams said that she was not criticising the report itself, just that it was unnecessary. Ms Adams submitted that the subsequent charges of £954.16 and £552.24, both dated 1 September 2021 are apparently for the same work.

43. Mr Loveday submitted that since 2002 the responsibility for the safety and maintenance of the electrical supply from where the main supply cable terminates to the endpoint of the distribution of power within the premises rests with the freeholder, and that since Grenfell freeholders have sought to mitigate their liabilities by demonstrating that all reasonable steps have been taken to ensure the safety of the tenants. Mr Loveday drew the tribunal's attention to the absence of expert evidence that the report was unnecessary. He also noted that no alternative estimate for such an audit had been provided.

44. The tribunal accept that in the circumstances it was not unreasonable for the respondent to undertake an audit, having recently bought the freehold. The two subsequent invoices suggest that work was required and that this was revealed by the audit. In the absence of any alternative quote the tribunal find the cost incurred of £3000 to have been reasonable. Examination of the two invoices dated 1 September 2021 show that the invoice for £954.16 refers to 9 flats and that for £552.24 to 7 flats, indicating that one relates to Block B and the other to Block A. Accordingly they do not appear to duplicate work. The tribunal finds them to be payable and reasonable.

Fire safety and EWS1

45. The Scott Schedule prepared by Ms Adams contains charges which relate to fire and health and safety. Mr Loveday submitted that these were matters the subject of another application, which currently has leave to appeal to the Upper Tribunal and that whether the costs were reasonable will depend largely on the outcome of that appeal. Ms Adams did not address this point in her closing submissions.

46. The tribunal decision LON/00AY/LSC/2021/0153(the **'previous decision**') dealt with the 'waking watch' service charges incurred in the service charge year 2020/21. This tribunal cannot consider any sums which relate to the 'waking watch' charges in that year or are ancillary thereto. Section 27A (4) of the 1985 Act provides that no application may be made under section 27A in respect of a matter which has been the subject of determination by a court. The determination in question is currently the subject of an appeal.

47. The tribunal accepts Mr Loveday's submission that the Scott Schedule prepared by Ms Adams contains items which may or may not be affected by the previous decision once the appeal has been determined.

The appeal may impact on the extent to which other items contained in the service charge accounts are payable by way of service charge or are reasonable. Pending that decision this tribunal makes no determination in relation to the invoices which refer to works in connection with the external cladding (and many of which are referred to in the previous decision), namely;

- The Hydrock invoice dated 29 February 2020 in the sum of £3600;
- The invoice from Trident dated 2 September 2020 for £1800;
- The various invoices from JMC issued in 2020 and 2021 which refer to professional fees advising on matters associated with external cladding. (The tribunal notes that the invoices provided to it in the bundle do not equate to the sums referred to by Ms Adams in the Scott Schedule);
- The Crescent Safety Limited's invoice dated 28 February 2021 £550 for carrying out Fire and Health Safety Assessments;
- The BML invoice dated 8 August 2021 for £4,602;
- Waking watch costs 15 March 2021 to early November 2021; and
- Electricity consumed in connection with the 'waking watch'.

48. The applicant denied liability to pay ACS Fire Protection annual insurance in the sum of £384 included in the service charge year ending 25 December 2019 on the basis that no evidence of the contract or services provided had been supplied. Mr Loveday drew the tribunal's attention to the inclusion of the relevant sums (£192 for each Block) in Martin+ Heller's certificates for that service charge year as evidence that the policies existed.

49. The tribunal accept Mr Loveday's submission that the certificates of Martin + Heller confirm that the policies existed and, in the absence of any evidence to the contrary find that the premiums of £192 for each Block were reasonable.

50. Ms Adams challenged the reasonableness of fire safety works to Block A incurred in 2020 in the sum of £4,036.83. The respondent stated that this sum does not appear in the service charge accounts for that year.

51. The tribunal agree that this sum does not appear in the service charge accounts for 2020. It does not appear to be a service charge item and is therefore not before the tribunal to consider

52. Ms Adams challenged the reasonableness of BML's invoice dated 5 May 2021 of £1,608 for certain fire proofing works, charged as part of the Estate Service Charge, querying whether the work had been completed and proposing that a charge of £500 for the works would have been reasonable. Ms Adams provided no alternative estimates to substantiate her lower offer. The respondent stated in the Scott

Schedule that the work had been carried out but there was no evidence of this before the tribunal.

53. The invoice for these works in the bundle dated 5 May 2021 states that it is for installing window restrictors, fire proofing breaches where pipes and wires leave electric cupboard, installing 'green break the glass box to front gate' and replacing ash tray. From the information before the tribunal this invoice does not appear to be covered by the previous decision. The respondent has provided nothing to justify the reasonableness of the charge but the applicant has not provided an alternative quote. From the limited information before the tribunal the charge appears very high for the described work. The tribunal therefore find it reasonable that this charge is discounted. In the absence of evidence as to what a reasonable cost for the work would be the tribunal, using its own knowledge and experience, find that an appropriate charge would have been £750 plus VAT.

Works to drains

54. The tribunal heard evidence from Dr Flint as to ongoing problems with the drains which she stated require checking and clearing on a regular basis due to build-up of limescale which results in toilets blocking. She is aware that Aquevo Drainage & Water Management have a contract to check and clear the drains but does not know with what frequency. Dr Flint had recently asked them to deal with a blocked drain during one of its maintenance visits but it would not do so without express authorisation from the respondent, which would lead to a further visit and incurring unnecessary additional expense. Ms Adams when giving evidence queried the need for the work undertaken by Aquevo and said that she had had insufficient evidence to permit her obtaining an alternative quote. Ms Adams challenged the costs of works carried out to the drains, which she stated had been double charged at £5232 and £5532. Ms Adams claimed these costs were excessive and that the respondent had not undertaken any necessary consultation under section 20.

55. Mr Loveday submitted that no evidence had been provided to support Ms Adams' contention that the drainage costs were unreasonable.

56. The certificate from Martin + Heller for the year to 25 December 2021 puts the drainage costs at £5,532 and states that it has seen invoices supporting this figure. There is no obvious double-counting as this is the only figure referred to in the certificate. The invoices from Aquevo in the bundle before the tribunal are

- one dated 23 December 2020 for £1,194, which sets out the work undertaken (described as 'Drain service & Repairs'), the number of personnel in attendance (two), the length of time taken (less

than three hours in total including travelling) and the equipment used;

- one dated 25 January 2021 for £1,890 containing similar detail and referring to under 7 hours of work including travelling; and
- one dated 4 February 2021 for £2,148 referring to in the region of 9 ½ hours work including travel, and two personnel.

The total of the three invoices is £5232 and the tribunal has worked from this figure in preference to that certified by Martin + Heller. Each invoice describes different work having been undertaken so they do not appear to be duplications. They are three separate invoices for work on three separate occasions. Taken separately each does not exceed the limit above which s20 consultation is required.

In the absence of any alternative quotes for similar work the tribunal finds these invoices to be reasonable.

JMC Maintenance Schedule

57. Ms Adams submitted that this preventative maintenance schedule, charged at a cost of £1,440, was unnecessary arguing that the respondent should have obtained such a schedule as part of its due diligence before purchasing the property. Ms Adams suggests that a local surveyor could have been instructed and undertaken the task in 3 hours including travel at a cost in the region of £600.

58. Mr Loveday submitted that it was a desirable document for a new freeholder to obtain and that the applicants had provided no evidence that such a schedule could have been obtained more cheaply.

59. By providing a suggested alternative charge Ms Adams appears to be accepting that preparation of such a schedule is appropriate. The tribunal does not agree with Ms Adams that such a preventative maintenance schedule would necessarily be part of a purchaser's due diligence and finds that it is reasonable for a new owner to commission such schedule. Ms Adams provided no evidence to the tribunal to substantiate her suggested charge of £600, and in the circumstances the tribunal finds the amount charged of £1,440 to be reasonable.

Gate maintenance contract and gate works

60. The applicant had challenged the inclusion of a charge for a gate maintenance contract in service charge year 2019 and gate works in 2020 but Ms Adams withdrew these items in her closing submissions.

61. The tribunal notes that given the invoices relating to gate maintenance in the bundle and the absence of any alternative estimates it would have found these costs to be reasonable.

D & S Floors 2020-2021

62. The applicant challenged an invoice of £6,720 in relation to the repair of floor damage to Flat 10 for nor being an item of service charge. The damage was the subject of an insurance claim by the landlord and there was evidence in the bundle that the claim had been approved by the insurers. Mr Loveday submitted that this was a service charge cost as the landlord's obligations extend to 'such other costs as may be necessary to maintain the Building and the Estate as a good class residential Building and Estate'.

63. The tribunal do not accept Mr Loveday's submission. The repair of a floor of an individual flat is not a service charge item. Unfortunately page 7 of the lease of Flat 10 is not in the bundle but the demise of Flat 3 makes it clear that the demises include the floor boards and repair of the demised premises is the tenant's responsibility. Here the damage was the subject of an insurance claim. The e mail from Mr Gurvits in the bundle dated 10 August 2020 confirms that the insurers are paying and would be paying the landlord. If the insurer has been dilatory in making the payment that is a matter between the landlord and the insurer but it does not entitle the landlord to add the cost to the service charge.

Accounting costs

64. Ms Adams submitted that the costs charged for accounting services were unreasonable, and listed these in the Scott Schedule as being

- £1,020 in 2019 (five months)
- £1,500 in 2020
- £2790 in 2021

made up as stated in her witness statement of 18 February 2022

- £1,020 for 2019
- £1,110 for 2020
- £930 for the period to June 2021
- £1,860 for the period to December 2021

Ms Adams submitted that there was double-counting in December 2021, with the sums certified in June 2021 being added to those demanded in December 2021. Ms Adams drew the tribunal's attention to the fact that the invoices are not numbered and are carelessly drawn, and that the invoices dated 1 June 2021 have a narrative referring to the period December 2019 to December 2020.

65. Mr Loveday submitted that Ms Adams complaints about poor service and failure to comply with the lease terms were unsubstantiated.

66. From the invoices in the bundle the tribunal find that the fees charged for 2020 were £1,110 and not £1500. It agrees that the invoices dated 1 June 2021 incorrectly refer to the period to which they relate and that the fees in those invoices are included in the total demand of £1,860 for the period to December 2021.

67. The tribunal is not in a position to make a determination in respect of the fees of £930 demanded for the period to June 2021 as these were the subject of the previous decision. It is therefore only considering the sum of £930 for the period to December 2021.

68. The sums that the tribunal is therefore considering are

- £1,020 for 5 months in 2019
- £1,110 for 2020; and
- £930 for the period June to December 2021

69. From the invoices in the bundle the tribunal it appears that the accountants are charging a fee which does not appear to be calculated with reference to the time spent on the review and report. The tribunal therefore presumes that this is a flat rate fee agreed by the respondent with the accountants. Errors in some of the invoices provided suggest a lack of care in preparing these but there is nothing to suggest that the actual certificates are incorrect. The fees for the part years 2019 and 2021 are disproportionately high compared to the fee charged for 2020 and no explanation has been given for this by the respondent. However in the absence of any alternative quote from the applicants the tribunal find the fees referred to in as set out in the immediately preceding paragraph to be reasonable.

Management fees

70. The applicants are challenging the following management fees

- £3,142 (incorrectly shown as £1,020 in the Scott Schedule) in 2019, made up .
- £5,508 in 2020
- £8,445.80 in 2021

71. The tribunal heard evidence from Dr Flint, Ms Nethersole and Ms Adams as to poor management by Eagerstates, evidenced by lack of management in relation to cleaning, and drains. Ms Nethersole gave evidence that the only example of active management by Eagerstates

had been a letter written to her brother about keeping a bicycle in the common hall.

72. Ms Adams submitted there was a lack of contractual documentation evidencing the relationship between the respondent and Eagerstates, referring the tribunal to the only contract between them that the applicants had seen being for a term of twelve months from 25 December 2020. Ms Adams submitted that there was a lack of clarity in the statements of account prepared by Eagerstates. There was no explanation for why the management charge for Block B in 2019 was £660 while that for Block A was £360

73. Mr Loveday submitted that the applicants had seen one management agreement and that there was clear evidence of management from the accounts provided. He submitted that the management fee was charged as a fixed fee per annum with additional charges only charged when there is section 20 consultation. In his opening submissions Mr Loveday stated that the charges of £1,200 and £1,500 are modest charges for managing two blocks of 14 flats plus two penthouses and estate grounds and that the applicants had provided no alternative quotations.

74. Mr Loveday has incorrectly referred to the accounting charges in the Scott Schedule rather than the management charges when making the above submissions.

75. If, as stated, the management fee is based on a fee per unit, and there has been no suggestion that there were additional charges to Block B in 2019 the tribunal find that the management charge for Block B is incorrect. On the basis that Block A then contained 6 flats and the management fee for the period from June to December that year was £360, given that Block B then contained eight flats the tribunal find that the correct management fee for Block B would have been £480. This is the equivalent of an annual charge per unit in the region of £100.

76. To that needs to be added a proportion of the Estate service charge which is stated in the accounts to be £1,734 for the whole year. This cannot be correct as the certificate also contains a management charge levied by the previous agents in respect of the period up to June. The tribunal therefore find that £1,734 must therefore have been for June to December 2019. This appears to have been divided between 18 units to give a unit charge of £96.33, which is equivalent to an annual charge in the region of £165.

77. The tribunal find that an annual maintenance charge per unit of £265 (apportioned to £155 for seven months) for the service charge year would not be unreasonable if the managing agents were managing the property in accordance with the principles of good estate management.

78. The management fee for Block A in the year to December 2020 was £756, for Block B £1,386 and for the Estate £3,366. The figures for Block A and the Estate are taken from the Martin + Heller certificates. There being no certificate for Block B in the bundle the Block B figure is taken from Eagerstates accounts. The Block A charge is charged to seven flats, presumably taking into account the new penthouse. This is equivalent to £108 per flat. The Block B charge is equivalent to £154 per flat, assuming nine flats in Block B. No explanation has been provided to the tribunal to explain the discrepancy between the sums charged to the two Blocks. The estate management fee equates to £187 per unit.

79. The tribunal finds that an annual maintenance charge of £295 per unit would be reasonable if the managing agents were managing the property in accordance with the principles of good estate management.

80. This tribunal cannot consider any sums which relate to the 'waking watch' charges or are ancillary thereto in the year 2020/2021 by reason of the previous decision. It has therefore limited its decision to the unit charge set out in the management contract for that year in the bundle before it. The management contract for the year from 25 December 2020 in the bundle indicates that the total charge per unit for each unit, whether in Block A or Block B is £348, made up of a charge per unit for the estate charge of £189.60 and a charge per unit of £158.40.

81. The tribunal find that the increase in the Block charge to be unreasonable. In the absence of any explanation as to why there was such an increase it considers that a Block charge of £115 (including VAT) and the Estate Charge of £189.60 would be reasonable if the managing agents were managing the property in accordance with the principles of good estate management, a total per unit of £304.60

82. Eagerstates provided no witness statement and did not appear at the hearing so the tribunal were unable to ascertain the extent of their management of the property. In considering whether Eagerstates have managed the property to a reasonable standard the tribunal has had regard to the evidence that it has heard from Dr Flint, Ms Nethersole and Ms Adams. It has also considered the form of the service charge accounts prepared by Eagerstates. The tribunal finds that Eagerstates has not actively managed the property as the tenants might be entitled to expect. There are no alternative management quotes before the tribunal. In the circumstances the tribunal find it appropriate to discount the fees it has found reasonable above by twenty per centum to a total charge per unit of £243.68.

83. The certificate from Martin + Heller of 6 December 2021 relating to the service charge year ending December 2021 includes a charge of £164.64 for 'Paxton Fobs'. The suggestion in the Scott Schedule is that this item related to Flat 8. That is therefore not a service charge item and the applicants are not liable to pay this sum. Whether it was or was not

provided to Flat 8 is a matter for the tenant of that flat and the landlord.

Administration charges

84. The Scott Schedule lists a variety of charges levied against the individual flats (with the exception of Flat 8) which the applicants describe as 'administration charges'. Ms Adams submitted that these were not payable because the service charge demands/accounts upon which they are based are invalid, the absence of supporting invoices and absence of the Summary of Tenants' Rights required under Schedule 11 of the 2002 Act.

85. There is insufficient information before the tribunal for it to determine whether the sums are administration charges and for it to make any decision in respect of these sums. The tribunal is also conscious that recoverability and/or reasonableness of these sums may depend upon the outcome of the appeal of the previous decision, and also on this decision. The tribunal therefore makes no determination in respect of these items. The applicants may wish to reapply for a determination as to liability to pay/ reasonableness of these sums in due course.

Application under section 20C of the 1985 Act

86. In the application form the applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, 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.

Application under Rule 13

87. In a statement of case dated 25 January 2022 the applicants sought an order for costs under Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 by reason of the respondent's failure to engage with the applicants and comply with the directions issued by the tribunal. The schedule of costs attached to the statement seeks costs of a partner and a paralegal in the sum of £6,096.00 including VAT.

88. The respondent's case on the issue of Rule 13 costs refers the tribunal to the decision in *Willow Court Management Co Ltd v Alexander* [2016] UKUT 0290 where it was held that the threshold of what amounts to unreasonable behaviour under Rule 13 is a high one and that even if the tribunal decides that there is an element of unreasonable conduct an order for the payment of costs does not necessarily follow. The

respondent submits that its conduct has not reached the relevant threshold. Until shortly before the hearing the respondent was not legally represented and should be viewed as a litigant in person. The respondent submits that the applicants should be asked to provide evidence of the applicants' liability to make payment of the sums the subject of the application given that the applicants' representative is a solicitor and the basis of the claim for costs is unclear and queries whether the applicants would be liable for the costs sought in the absence of a costs order.

89. In reply the applicants refer the tribunal to the fact that the tribunal considered debarring the respondent on 8 November 2021. The applicants deny that the respondent should be treated as a litigant in person as it was represented throughout by Eagerstates its professional managing agent and Mr Gurvits in particular whom they understand has a legal qualification and regularly represents Assethold Limited in Tribunal proceedings. The applicant set out a response to the respondent's chronology questioning its completeness.

90. The applicants' schedule of costs does not specify the firm of solicitors incurring the costs. It is unfortunate that there is no invoice from Gregsons with the documents before the tribunal, as that would have disposed of the respondent's submission that the costs might not be recoverable from the applicants. It is assumed by the tribunal that the costs claimed have been incurred by Gregsons who are the solicitors to the applicants.

91. Ms Adams is a partner of that firm and is also one of the applicants. This means that at different times during the hearing she appeared as an applicant witness and at other times as the applicants' solicitor. Notwithstanding thisthe tribunal have no reason to doubt that Gregsons are billing the applicants, of whom Ms Adams is only one. That she is also an applicant does not prevent the tribunal awarding Rule 13 costs.

92. The respondent has not challenged the amount of the costs but rather that its conduct has not been so unreasonable as to meet the high threshold required by *Willow Court*. The tribunal do not accept that the respondent was unfairly prejudiced through it not having legal representation until shortly before the hearing. It considers that its agent Eagerstates is sufficiently familiar with the procedure of the tribunal to know that directions must be complied with and will be aware of the warning at the end of the directions as to the consequence of failing to comply with directions.

93. The tribunal finds that the respondent, acting by its agent Eagerstates, has acted unreasonably, to the extent that it has met the high threshold required by *Willow Court,* evidenced by the failure to comply with

directions and the threat of disbarment. It also notes that Mr Gurvits did not attend the hearing.

94. Adopting the approach take in *Willow Court* the tribunal finds that in the circumstances of this case an Order should be made, and that that Order should be for costs.

95. The amount of the applicant's costs not having been challenged by the respondent, the tribunal awards the applicants its costs of £6,096.

Name: Judge Pittaway **Date:** 30 May 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).