FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LSC/2021/0453**
Property	:	**Flats 1-7 and 9, 40 Bow Common Lane, London E3 4AX**
Applicants	:	**The tenants of the above flats**
Representative	:	**Mr N Mina (flat 4) and Mr D Price (Flat 1)**
Respondent	:	**Assethold Limited**
Representative	:	**Eagerstates Limited**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge Pittaway** **Ms S Phillips MRICS** **Mr J Naylor MRICS MIRPM**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**23 May 2022**
Date of decision	:	**27 June 2022**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Mr Mina represented the applicant tenants and spoke on their behalf. Mr Price also attended the hearing. Mr Harrison of Counsel represented the respondent.

The documents that the tribunal was referred to were in an electronic bundle of 733 pages. In addition the tribunal had before it Submissions for the Respondent (6 pages).

The tribunal heard submissions from Mr Mina and Mr Price for the applicants and from Mr Harrison for the respondent.

Decisions of the tribunal

The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the **2002 Act**") as to the amount of service charges and (where applicable) administration charges payable by the applicants to the respondent in respect of the service charge year 2021. The amount in dispute is £28,516.

2. The applicants also made an application under s20C of the 1985 Act that the costs in connection with the proceedings should not be included in any service charge payable by the applicants.

The background

3. The property which is the subject of this application is described in the application as a purpose-built block of nine flats in East London, comprising three one bedroom flats, four two bedroom flats and two three bedroom flats. The building has a lift and there is a small communal courtyard.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary.

5. The applicants hold long leases of the flats in the property which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. A copy of the lease of Flat 4 was included in the bundle before the tribunal. The service charge

provisions are at Schedule G which provides for a payment on account with a balancing charge at the end of the year. The specific provisions of the lease will be referred to below, where appropriate.

6. An RTM company gained the right to manage the property from January 2022.

The issues

7. In their application the applicants identified liability to pay or reasonableness of the following to be at issue.

1 Lift Maintenance & Repairs	£2,994
2 Self Closing Door	£2,800
3 Self closing Door admin fee	£504
4 JMC - Surveyors (dealing with Fire, EWS1)	£1,260
5 Trident Building Survey	£4,200
6 Pyrosafety EWS1 forms report	£5,400
7 Six month drain cleaning	£204
8 NIECC inspection -	£526
9 Surveyors Preventative maintenance schedule	£1,170
10 Surveyors for Insurance Re-instatement value	£2,220
11 Electrical Audit report	£2,160
12 Fire door survey	£216
13 Window Restrictors & Fire proofing works	£2,178
14 Electrical Safety rubber matt	£733
15 Emergency Light fittings installation as per section 20 notices	£1,950

8. In the Scott Schedule the applicants accepted the charge for drain cleaning.

9. In the Scott Schedule the respondent stated that it had received £2,549.60 from insurers in relation to the self-closing door and that this had been credited to the service charge account. The applicants accepted they should pay the excess of £250.

Evidence and Submissions

10. The bundle did not include any witness statements from the applicants but it did contain a completed Scott Schedule which it was agreed should be treated as the applicants' witness statement. The bundle contained a witness statement by Mr Ronni Gurvits who did not attend the hearing. This statement was limited but it did confirm his belief in the accuracy of the responses made by the respondent in the Scott Schedule.

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

Lift Maintenance & Repairs

The tribunal's decision

12. The tribunal determines that it was reasonable for the respondent to have entered into a maintenance contract in respect of lift maintenance and that the cost of this contract, in the absence of any challenge as to the contract sum, is reasonable.

13. The tribunal determines that it was reasonable to charge the applicants £2298 for lift repairs. .

Reasons for the tribunal's decision

14. The sum of £2,994 was made up of a charge of £696 for the maintenance contract, which ran from 20 April 2021, with the remainder of the charge being for repair work carried out to the lift on five occasions between 19 May 2021 and 10 November 2021. The repair work was supported by invoices in the bundle.

15. Mr Mina submitted that either the repair work should have been covered by the maintenance contract or, given the number of times the maintenance company had to visit, the maintenance contract was superfluous. Mr Mina questioned whether the company had in fact visited the property the number of times specified in the contract.

16. Mr Harrison submitted that there was no evidence that the maintenance service provided by the company was not reasonable, referring to the services included in the contract. Mr Harrison stated that in the service charge year in question only three visits might have been expected, given when the contract was entered into.

17. The tribunal find it was reasonable for the respondent to enter into a maintenance contract with a lift company. There was insufficient

evidence before the tribunal as to the number of maintenance visits made but it is clear that the company did attend on site. The sum charged for this service was reasonable in the absence of any challenge as to the amount**.**

18. The tribunal find that the work specified in the invoices from the company included in the bundle for repair work is outside the services contemplated by the maintenance contract and, in the absence of any challenge as to the reasonableness of these sums, they are reasonable.

Administration fee for the self-closing door

The tribunal's decision

19. The tribunal determines that the amount payable in respect of the administration fee charged in connection with the self-closing door is £504.

20. The tribunal notes that the costs of the self-closing door itself was no longer an issue before the tribunal, as it had been the subject of an insurance claim and had been paid by the insurer, less an excess.

Reasons for the tribunal's decision

21. The applicants challenged the respondent's administration fee on the grounds that a fee of 5% would be reasonable, not a fee of 15% plus VAT (making it 18%). They also challenged the fee on the basis that this was an issue that had already been dealt with by the managing agents who had acted for the previous freeholder.

22. The respondent submitted that it had undertaken a consultation process in connection with the replacement of the door with a better one. The previous agent had not consulted, that it was reasonable to charge for this and that a 15% fee (plus VAT) for section 20 consultation is reasonable.

23. The tribunal notes that the applicants accepted that the respondent had undertaken a consultation process.

24. The tribunal find that a 15% fee for fees in connection with consultation to be reasonable, given the likely amount of work involved and the absence of any alternative quote.

JMC - Surveyors (dealing with Fire, EWS1)

The tribunal's decision

25. The tribunal find that it was reasonable for the respondent to employ an expert to liaise with the relevant consultant in connection with these matters but that the amount of time spent by JMC on this work was unreasonable. It finds that a reasonable charge would have been £525 plus VAT.

Reasons for the tribunal decision

26. This was a charge by JMC for liaising with the relevant consultants to undertake the appropriate fire survey, and obtaining EWS 1 forms.

27. Mr Mina submitted that this was work that should have been undertaken by the managing agents as part of their role.

28. The respondent submitted that it was unrealistic to expect a managing agent to have the relevant knowledge and expertise in what is a heavily regulated area and that it was reasonable to appoint a surveyor to deal with the process.

29. The tribunal find that it is appropriate to instruct a surveyor, independent of the managing agent, with appropriate expertise to deal with the process. It notes that the applicants have not challenged the expertise of the company instructed, JMC, not its charge out rate of £150 per hour (exclusive of VAT). JMC have invoiced for a total of 7 hours work, in invoices set out in the bundle. The tribunal find that there is duplication in the work undertaken by JMC evidenced in those invoices. The tribunal find that given JMC's familiarity with the property it would have been reasonable for them to have charged for three and a half hours' work, not seven.

Trident Building Survey and Pyrosafety EWS1 forms report

The tribunal's decision

30. The tribunal finds the Trident fee, of £2,300 plus VAT (for survey fee and report) and £1,200 plus VAT for scaffolding, etc. to be reasonable.

31. The tribunal finds the Pyrosafety fee of £4,500 plus VAT for preparing a report and EWS 1 form to be reasonable.

Reasons for the tribunal decision

32. The costs in question related to the Pyrosafety Report (the external wall review), the Trident Report (the external wall system investigation photographic report) and the Form EWS 1.

33. Mr Mina submitted that the individual who signed off the EWS 1, Mr Clemens, did not have the qualification required by the RICS to do so. Mr Mina submitted that the correct consultation procedure under s20c was not complied with. Finally Mr Mina submitted that the costs were unreasonably high, referring the tribunal to an alternative quote that he had obtained from Tri Fire for a fire engineer façade risk assessment and holistic fire safety review and intrusive investigation works in the sum of £2,425 plus VAT.

34. Mr Price submitted that he had found that the mortgage market did not accept that Mr Clemens was appropriately qualified. Mr Price submitted that professionals did need to consult if their services form an 'integral part' of the works.

35. Mr Harrison submitted that Mr Clemens who signed off the EWS 1 is a chartered engineer and a fully qualified member of The Institution of Civil Engineers, and that that institution is one of the bodies recognised by the RICS Guidance. Mr Harrison submitted that professional services do not count as 'qualifying works, requiring compliance with section 20 consultation. On the applicants' alternative quote from Tri Fire Mr Harrison submitted that it did not contemplate the issue of EWS 1 and appeared to be a quote for a 'desk top' exercise without consideration of how access might be achieved. He submitted that what Trident had been asked to produce included not only the EWS 1 but also design records and checking on the adequacy of design and installation. Mr Harrison referred the tribunal to a further quote obtained by the applicants, from Hollis Global, in the sum of £8,550 plus VAT, which was also in the bundle.

36. While sympathising with the position Mr Price finds himself in, the tribunal finds that Mr Clemens had the appropriate qualification and expertise to sign the EWS1.The RICS states that the signatory should be a fully qualified member of a relevant body within the construction industry and recognises that the Institution of Civil Engineering is a body recognised as operating in the built environment.

37. The tribunal find that the fees in question are fees for professional services, and the tribunal finds that there were no works to which the fees could be 'integral'. There were no works, only professional fees.

38. The tribunal find that the Tri Fire quote was not for like-for-like work. It does however note that it did quote for providing an EWS 1, contrary to

what Mr Harrison submitted. The Trident report went beyond producing the EWS 1 report, undertaking an intrusive survey and report and photographic record, which enabled Pyrosafety to produce their report.

39. The tribunal also note the quoted provided by Hollis Global.

40. The tribunal find that the costs incurred by the respondent for the Trident Report and the Pyrosafety Report to be reasonable.

EIRC Report (incorrectly described as NIECC report)

The tribunal's decision

41. The tribunal find that the respondent was unreasonable in seeking to charge the cost of this report to the applicants.

Reasons for the tribunal decision

42. Mr Mina submitted that the cost of obtaining this report was superfluous as the tenants' Health & Safety and Fire Report in November 2019 had said it would only be necessary to undertake this inspection if the property was over ten years old. The respondent should have requested this from its predecessor in title when it bought the freehold.

43. Mr Harrison submitted that there was no certificate and that it was therefore reasonable for the respondent to arrange for an Electrical Inspection Condition Report to be carried out, and that it had been obtained at a reasonable costs, evidenced by the alternative quotes contained in the bundle.

44. As the property was only two years old when the respondent bought it the tribunal would have expected that there should have been such a certificate and that the respondent should have raised enquiries about its absence when it bought. There was no evidence before the tribunal that it had done so and Mr Gurvits did not attend the hearing and the tribunal were therefore unable to question him about this. In the circumstances the tribunal find that it is unreasonable of the respondent to remedy its absence at the tenants' cost.

Preventative maintenance survey

The tribunal's decision

45. The tribunal find that the respondent was unreasonable in seeking to charge the cost of this report to the applicants.

Reasons for the tribunal decision

46. Mr Mina submitted that it was unreasonable to charge this to the applicants. It was not an item of expenditure included in the budget for the service charge year 2021, and therefore not contemplated at the beginning of the year. It was unreasonable of the respondent to decide to undertake this during the year, particularly when the tenants had started an application for a right to manage the property in November 2020.

47. Mr Harrison submitted that it was reasonable for the landlord to have a planned maintenance programme and that this was unaffected by the RTM process.

48. It does not appear that the landlord considered the necessity of obtaining such a report when drawing up the budget for the year. The tribunal find that it was unreasonable of the landlord to decide to commission this survey in the middle of a service charge year where it was not referred to in the budget for that year, where the property is only two years old and where the possibility existed that it would cease to manage the property shortly.

Insurance re-instatement survey

The tribunal's decision

49. The tribunal find that the amount charged by JMC was unreasonable and find a reasonable charge to be that proposed by the applicants, namely £950 plus VAT.

Reasons for the tribunal decision

50. Mr Mina submitted that the costs of this survey was unreasonable, providing two lower comparable quotes, of £950 plus VAT from Sillence Hurn, based in Southampton and £1,250 plus VAT from Hollis, based in Bristol. He submitted that a reasonable charge would be £950 plus VAT.

51. Mr Harrison submitted that the firms from whom the applicants obtained their quotes were regional firms, and that the respondent had used JMC as they had an existing relationship with the respondent, and it should be entitled to use a firm, even if based in London, if it wished.

52. Mr Price submitted that JMC is a Manchester-based company.

53. The tribunal note that JMC is not a London -based company. In any event the location of the provider should be irrelevant to the provision of a valuation for re-instatement purposes. Given the alternative quotes obtained by the applicants the tribunal find the amount charged by JMC to be unreasonable and find that a charge of £950 plus VAT to be reasonable.

Electrical audit report

The tribunal's decision

54. A charge of £1000 plus VAT is reasonable for this report.

Reasons for the tribunal decision

55. This was a standard audit report prepared by BNO London.

56. Mr Mina submitted that the applicants had been able to obtain comparative quotes for £1,160, £1,200 and £1,068 and that the amount of £2,160 charged by the respondent was unreasonably high.

57. Mr Harrison submitted that the quotes were not for a comparable service, that they were for an EIRC test on the fuse board in each flat, whereas the BNO survey was on the electrical feed supply to the building.

58. From the information before the tribunal it does not appear that Mr Mina obtained quotes for a comparable report. The tribunal find, from the copy of the BNO London report in the bundle that this is a comprehensive report but the tribunal do not understand why it was necessary and in the absence of Mr Gurvits were unable to clarify this. It further notes that there appears to be duplication between this report and the EICR report. The applicants offered to pay £1,068. In the absence of evidence from the landlord as to why this report was necessary, and given the applicants' offer the tribunal find a charge of £1000 to be reasonable.

Fire door survey

The tribunal's decision

59. The tribunal find the charge of £216 for the fire door survey to be reasonable.

Reasons for the tribunal decision

60. Mr Mina submitted that this was an unnecessary survey given the Health & Safety and Fire Risk assessment that was performed in 2019, which he submitted included a survey of the doors.

61. Mr Harrison submitted that the 2019 report was not a fire door survey, it was a fire risk survey and did not involve an intrusive investigation of the doors. He further submitted that the fire door survey was recommended in the Planned Preventative Maintenance Schedule prepared by JMC and in the Fire Risk Assessment.

62. The tribunal find that this survey is not a duplication of the 2019 survey, that it was recommended in the Fire Risk Assessment and that its cost is reasonable.

Window restrictors and fire proofing works

The tribunal's decision

63. The tribunal find that a reasonable charge for the work as identified would be £426.

Reasons for the tribunal decision

64. Mr Mina submitted that this work was not required by the 2019 report, and that the costs charged for 7 window restrictors (£250) was unreasonable as these can be bought on-line for £10 each. Mr Mina submitted that the applicants were being charged £800 for unspecified 'fire proofing works'. The only other fire-proofing work Mr Mina could identify was stickers for evacuation procedures that had been placed on the walls.

65. Mr Harrison referred the tribunal to the Fire Risk Assessment which stated that restrictors should be installed that were not easily by-passed. He stated that the fire proofing works were to remedy breaches of compartmentation where pipes and wires leave the riser shaft on all floors and in the electric and water tank rooms and the removal of rubbish from the tank room and the electric room. He submitted that it is reasonable to expect a managing agent to instruct a reputable firm rather than buy materials on the internet and hire an unknown person to undertake the works, Mr Mina having referred the tribunal to the various quotes for undertaking the works obtained on line.

66. The tribunal find that the 2021 survey may have identified issues that may not have existed/been apparent in 2019. As to the work identified by Mr Harrison the tribunal find that some must have been the result of inappropriate action by the landlord (leaving rubbish in areas not accessible to the tenants) and that it is not reasonable to charge this to the service charge.

67. The tribunal find that the invoice provided by the respondent contains insufficient detail and the respondent was not assisted by Mr Gurvits not attending the hearing. On the basis of the information before it the tribunal finds that it should not have taken more than one day to undertake such fire proofing works as have been identified, at an operative cost of, say, £200. Materials should have been obtainable at a cost of say £220 and parking should have cost £6. There should have been no charge to the tenants for removing rubbish from areas to which they have no access.

Electrical safety rubber mat

The tribunal's decision

68. The tribunal find that a charge of £165.17 for this item is reasonable.

Reasons for the tribunal decision

69. Mr Mina submitted that a cost of £733 was unreasonably expensive. He included two alternative quotes for a mat of the required specification , of £17.51 and £165.17, included in the bundle. He then added the cost of two hours work to install it (based on the charge out rate of Handy.com and Task Rabbit) and submitted that a cost of £238.12 would have been a reasonable charge for this item.

70. Mr Harrison submitted that the quotes obtained by Mr Mina did not include testing by a registered provider pre and post installation.

71. The bundle includes a separate invoice from BNO London referring to a call-out on 20 August 2021 to install the mat. The BNO standard audit report of 17 June 2021 states that on that date there was an electrical safety rubber mat conforming to Electricity at Work Regulations 1989 present at the property. The tribunal find on the evidence before it that the call-out on 20 August was unnecessary, and the charge for it is therefore unreasonable

72. The applicants are prepared to allow the cost of a mat as a reasonable service charge item. Having regard to the quotes obtained by the applicants the tribunal find a reasonable cost for this to be £165.17, the amount of the higher quote obtained by the applicants, from Rubber Mats Direct.

Emergency light fittings installation

The tribunal's decision

73. The tribunal find that the cost of installing the emergency lighting is reasonable.

74. The tribunal does not find the administration charge of £300 to be reasonable.

Reasons for the tribunal decision

75. The respondent is seeking to charge £1650 for the cost of installing emergency light fittings on the hall landings and outside the lift, with a

further charge of £300 payable to Eagerstates in connection with section 20 consultation.

76. Mr Mina submitted that the work was unnecessary because in 2019 the applicants had been told that the emergency lighting was up to standard, and that during the consultation process and the respondent had not had regard to the complaints of various residents.

77. Mr Harrison submitted that the work had been required under the Fire Risk Assessment undertaken by the respondent.

78. The tribunal find that as the work was recommended by the Fire Risk Assessment (a more recent document than the 2019 survey) it was reasonable for the respondent to undertake the work and in the absence of any challenge to the cost the tribunal find the charge of £1,650 by Management 2 Management to be reasonable.

79. There is no evidence before the tribunal of any work undertaken by Eagerstates in connection with this work and the tribunal therefore find it is unreasonable for Eagerstates to make an administration charge without justifying to what work it relates. It is not sufficient simply to include an invoice in the bundle, and in the absence of Mr Gurvits from the hearing the tribunal were unable to clarify how these costs were incurred.

Application under s.20C

80. In the application form, the applicants applied for an order under section 20C of the 1985 Act. At the hearing it was agreed that this application should follow the decision on the substantive application.

81. The tribunal therefore **directs** that if the respondent wishes to challenge the s.20 application it shall by **14 July** shall send the applicants and the tribunal full details of the costs being sought, including:

- A schedule of the work undertaken;
- The time spent;
- The grade of fee earner and his/her hourly rate;
- A copy of the terms of engagement with the applicant;
- Supporting invoices for solicitor's fees and disbursements; and
- Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate.

82. If the respondent challenges the s.20 application by **28 July** the applicants may send the respondent and the tribunal a statement in reply to the points raised by the respondent.

83. If the respondent challenges the s.20 application the tribunal will determine the matter on the basis of the written representations received in accordance with these directions as soon as practicable thereafter.

Name: Judge Pittaway **Date:** 27 June 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).