



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/43UG/LSC/2021/0086

**Property** : Old Auction House, 70, 70a and 70b Guildford Street, Chertsey, KT16 9BB

**Applicant** : Rajesh Kishan  
Volodymyr Bogdanov  
Alex Van Oortmerrsen

**Representative** :

**Respondent** : Assethold Limited

**Representative** : Eagerstates Limited

**Type of Application** : Determination of liability to pay and reasonableness of service and administration charges

**Tribunal Member(s)** : Judge D R Whitney  
Mr S Hodges FRICS

**Date of Hearing** : 4<sup>th</sup> April 2022

**Date of Decision** : 21<sup>st</sup> April 2022

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**DECISION**

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## **Background**

1. The Applicants seeks a determination of service charges for the years 2020 and 2021.
2. The Tribunal issued directions on 2<sup>nd</sup> November 2021 and 9<sup>th</sup> February 2022.
3. The Applicants prepared and filed an electronic bundle. References in [] within this decision are to pages within that bundle.

## **The Law**

4. The relevant law is contained with section 19 and section 27A of the Landlord and Tenant Act 1985. A copy of those sections is annexed hereto marked "A".
5. The bundle contained a copy of a sample lease [25-57] being the lease of Flat 17 Old Auction House, 70 Guildford Street, Chertsey KT16 9BB made between Lux Homes Limited and Rajesh Kishan dated 8<sup>th</sup> October 2018. All parties accepted that the leases of all the flats were in common form.

## **Hearing**

6. The hearing took place remotely by video. All three Applicants were in attendance. Mr Kishan was the spokesperson for the Applicants. The Respondent was represented by Mr R Gurvits from Eagerstates Limited. Mr Gurvits attended by telephone only as his camera was not working.
7. The Tribunal did not inspect but various photographs of the Property were contained within the bundle. The Tribunal confirmed it has read the bundle and in particular the statements relied upon by each party.
8. As a preliminary matter Mr Gurvits raised that the Scott Schedule completed by the Applicant [563-569] had been included in the bundle but not previously served upon him. It appeared the Applicants had misunderstood the directions but had included items within the Scott Schedule. The Tribunal was satisfied that the matters raised by the Applicant only duplicated the concerns raised within their statement of case and the Tribunal allowed the document to be relied upon.
9. Mr Gurvits had made an application prior to the hearing seeking to clarify what matters were to be adjudicated upon. Mr Gurvits suggested it was not possible for the Tribunal to determine the actual charges for the service charge year ending December 2021.

10. The Tribunal determined it was the actual charges for the year ending December 2020 and the estimated charges for the year ending December 2021. The Tribunal explained to the parties that given the application was made during 2021 and disclosure was provided by the Respondent prior to the end of the service charge year and the preparation of accounts it was not able to determine the actual charges for the year ending 2021. It would be open to the Applicants, if they so decided, to make a future application in respect of the same.
11. Mr Kishan conceded that the Applicants took no issue in respect of the interim charges. Further the Applicants were satisfied that all of the charges were due and owing under the terms of the lease save for the repair fund. The Applicants conceded they had a liability to make payments and only sought to challenge the reasonableness of the costs.
12. Mr Kishan briefly set out the case for the Applicants and confirmed the statement they had given [70-79] was true.
13. Mr Gurvit's had no questions for Mr Kishan.
14. The Tribunal questioned Mr Kishan. He confirmed that now the Applicants had seen the receipt for the accountant's fee claimed by the previous freeholder they took no issue in respect of the same.
15. Mr Kishan felt there was no proper dialogue over works and the Respondent had no sense of responsibility for their actions.
16. Mr Van Oortmerssen confirmed he had nothing to add. Mr Bogdanov relied upon what Mr Kishan said and expressed his surprise at how much the service charges had risen since the Applicant had acquired the freehold.
17. The Applicant's confirmed to the Tribunal they had made all representations they wished.
18. Mr Gurvits relied upon his statement of case [119-124]. This responded to the issues raised.
19. Mr Kishan asked various questions of Mr Gurvits.
20. Mr Gurvits explained that his company have a wide panel of contractors whom they use. Many are based in North London but not all. They look to negotiate fixed rates for work to be undertaken irrespective of the location of the property on the basis contractors will work on properties within the portfolio managed. He is keen to ensure that all contractors provide a good service with good aftercare.
21. Mr Gurvits confirmed he personally had not visited the Property but members of his team had been 8 or 9 times since the building was acquired.

22. On being questioned by Mr Bogdanov Mr Gurvits confirmed generally he requires sight of photographs to show jobs have been undertaken. Sometimes a member of his team will go out to check a job has been satisfactorily completed but not routinely.
23. The Tribunal then questioned Mr Gurvits.
24. He confirmed the insurance was renewed upon the brokers recommendation. It is a policy for the portfolio as a whole which consists of in excess of 400 blocks. The brokers test the market annually to determine the best premium. He confirmed Eagerstates Limited receive no commissions or payments for placing the insurance and neither does the Respondent to the best of his knowledge and belief.
25. He confirmed his companies fee for management was a fixed charge which in 2020 was calculated as being £260 per unit plus vat for the year. In his opinion this is reasonable for the work undertaken.
26. He confirmed in respect of the administration charges being challenged if payments are not made the file would be passed to the Debt Recovery Agency who would pursue payment with a view to forfeiture if payments were not made.
27. Mr Gurvits confirmed that the earlier Tribunal decision in respect of flat 10 CHI/45UG/LSC/2021/0037 [108-118] paragraph 38(d) reflected the position relating to the roofworks and £2,912.40 was payable only by the owner of Flat 17. He explained scaffolding had been erected to enable an inspection to be undertaken and to identify what if any further works were required. The scaffolding had been left in place to allow the works identified as being required to be undertaken. Copies of the invoices and relevant photographs were within the bundle [171-204].
28. The Applicants each made brief statements in reply. They explained they objected to administration fees as they say no warning was given as to the instruction of debt collectors and they had been in communication with the Respondent's agent as can be seen within the correspondence within the bundle. It was explained that the letters from the debt collectors were all sent second class and Mr Kishan explained he received this the day before the 7 day deadline set in the letter. He suggested this was deliberate to ensure additional costs could be incurred.
29. The Applicants seek an order pursuant to Section 20C of the Landlord and Tenant Act 1985. They say the questions they have posed have been valid and if the Respondent had engaged in meaningful dialogue prior to the application it could have been avoided.
30. Mr Gurvits objected to the same and submitted the Applicants had presented a poor case with little evidence such as alternative quotes. He suggested no order should be made and he confirmed he would be looking to recover his firms costs of dealing with the application. He

relied on the definition of “Service Costs” within clause 1.1 of the lease [33] and in particular paragraph (b) of that definition which stated:

“the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord’s behalf in connection with the Building or the provision of the Services;”

31. At the conclusion the Tribunal confirmed to all parties that they had made all statements and representations. All parties confirmed they had done so and had nothing further to add.

### **Determination**

32. Attached to this decision marked Annex B is a copy of the Scott Schedule with the Tribunal’s comments included. This Scott Schedule should be read together with this decision.
33. The Applicants conceded they were not looking to challenge their liability to pay or the reasonableness of the estimated charges for the year ending 2021. For the sake of completeness we confirm that those sums are due and payable although superseded by the fact the service charge year has now ended and we understand accounts are available. We are satisfied the amount referred to as “Repair Fund” is a reasonable amount to include within the estimate of possible repair costs to be incurred in that service charge year and is payable.
34. In respect of the year in dispute the Applicants accepted they were liable to make payments of service charges to the Respondent and were not challenging the demands.
35. Turning now to the actual items challenged we have determined each as set out in the Scott Schedule annexed to this decision. We find that the Applicants produced no evidence to support their contention that costs were unreasonable. They had no alternative quotes or explanation as to what was unreasonable beyond suggestions that they may have been able to obtain works at cheaper cost but without any evidence.
36. The Tribunal explained to the Applicants at the hearing that when the Respondent acquired the freehold (as it did from Lux Homes Limited) it then became their landlord and stepped into the shoes of Lux Homes Limited. The Respondent was bound by the lease terms as though it has signed the same. Likewise where covenants were owed by the Applicants to the landlord under the lease these were now owed to the Respondent.
37. Further it was for the Respondent to determine what services were provided and how it looked to provide the same. Eagerstates Limited was the Respondent’s managing agent and the contractual

arrangement was between those two companies. Provided the lease allowed recovery of costs for services then the reasonable costs could be charged. Reasonable in this context does not necessarily mean cheapest and it is for the Respondent (and their agent) to determine how a service or repair is undertaken and to satisfy themselves as to the costs.

38. This Tribunal accepts the evidence of Mr Gurvits that he has a panel of contractors whom all provide fixed costs across the portfolio his company manage. Certainly the invoices provided support that there are no additional charges for travel and the like. Whilst we are satisfied it would be possible in most circumstances to find cheaper costs we accept the evidence of Mr Gurvits that he needs to weigh up the need to have works undertaken in a timely manner by a contractor whom he is satisfied can undertake the works to a reasonable standard and provide what he termed appropriate aftercare. This is in our judgment a reasonable approach.
39. Turning to the roof works we determine that Section 20 consultation was not required. The Respondent accepts that a sum of £2,912.40 should not be included within the service charges. Appropriate credits should be given to each leaseholder. We make no finding as to whether or not this is payable solely by the leaseholder of Flat 17 Mr Kishan. This is not a matter within our jurisdiction and would be a contractual claim within the County Court. In removing this amount the total cost falls below the threshold for consultation. In any event the invoices produced show that the total is not just for roof works but also for the costs of prior investigation as to what works may be required and these should be assessed on a separate basis. For these reasons we find no section 20 consultation is required.
40. We find that the cost of erecting the scaffolding is reasonable. Whilst it was suggested that a ladder could have been used to access the roof we find that the use of scaffolding to ensure a safe system of work is reasonable. Further we are satisfied that it was reasonable to leave the scaffolding in place to enable the works subsequently identified to be undertaken and in our judgement the roof works were reasonable and we have no evidence to suggest the cost or standard of works was anything but.
41. As to insurance we accept the evidence of Mr Gurvit's that the market was tested and no commission was received by his company and the Respondent. Given his explanation of the steps taken to determine the insurance we are satisfied that this is reasonable.
42. Whilst we can understand that the Applicants are concerned that the cost of services appears to be rising substantially this of itself does not mean the same are unreasonable. Sadly it is all too often the case that service charges can rise substantially particularly where as here you have a building which whilst relatively recently converted in part

is of older construction. In challenging the costs the Applicants do have to show the scope of the works is beyond what a reasonable landlord may do and the costs are beyond a reasonable range and evidence of this is required.

43. We turn to the administration costs. We note no invoices have been provided or evidence from the Respondent rebutting the suggestions letters were sent second class. The Respondent instructed a firm called the Debt Recovery Agency. The costs challenged are set out in paragraph 69 of the Applicants statement of case [77]. These costs total £1,800. In our judgment there is little or no evidence as to the reasonableness of these costs. We find that where payments have not been made as required under the lease, which is admitted by the Applicants at least in part, then costs may be recoverable whereas here the Respondent is considering forfeiture. However in our judgment costs need to be reasonable and proportionate given the amounts owed. We do not accept these amounts are reasonable or proportionate and, in our judgment, a proportionate amount including VAT, managing agents charges and the like would not exceed £600 given no proceedings have been issued.
44. Finally we consider whether we should make an order pursuant to section 20C of the Landlord and tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
45. Such remedies are discretionary. We have considered all matters and note that in the main the Applicants have not been successful. This is not the only consideration but we note we have found little real evidence was adduced to support the contention the costs were not reasonable although the Applicants did make various concessions which goes to their credit. Overall however we are not persuaded that we should make an order and we decline to do so. We would however state that in our judgment the clause relied upon by the Respondent does not allow the recovery of costs given as in our judgment no works have been undertaken in connection with the Building or Services as defined within the lease.

## RIGHTS OF APPEAL

- 1.A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
- 2.The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 3.If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28

day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.



**SCOTT SCHEDULE - COMPLETE A SCHEDULE FOR EACH YEAR IN DISPUTE**

**DISPUTED SERVICE CHARGES - S/C YEAR ENDED:**

**12 months to 31 December 2020**

Case Reference: CHI/43UG/LSC/2021/0086	Premises: Old Auction House, 70, 70a and 70b Guildford Street, Chertsey, KT16 9BB
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<b>ITEM</b> Eg insurance	<b>COST</b> Eg £X	<b>RESPONDENT'S COMMENTS*</b>	<b>APPLICANT'S REPLY*</b>	<b>LEAVE BLANK</b> <b>(FOR THE TRIBUNAL)</b>
Accountant fees (by previous agents)	£900.00	This was a charge passed on by the previous freeholder and included within the accounts		Conceded by the Applicant as payable and reasonable.
Electrical works (by previous agents)	£1,380.00	This was a charge passed on by the previous freeholder and included within the accounts	<ol style="list-style-type: none"> <li>1. Inadequate management (including commissioning and verification processes) of repairs and maintenance has resulted in recurring issues and excess expenditure.</li> <li>2. Evidence provided does not prove that the level of expenditure incurred is reasonable and that good value for money has been secured for the leaseholders.</li> </ol>	We are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable.
Digital code lock	£690.00	Cost is reasonable. No alternative quotes provided. Full details in statement	<ol style="list-style-type: none"> <li>1. Charge vastly overstated.</li> <li>2. For comparison, during 2021 the Respondent charged £140 for the same repair.</li> <li>3. In addition, we have independently determined that the cost of a replacement lock is approximately £35-40 and the cost for fitting is approximately £75 for an hour of labour.</li> </ol>	We are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable. Whilst the Applicants referred to other costings we were not satisfied and do not find that evidence was produced which supported that the cost charged was unreasonable.
Call out and repair to Gate	£3,775.20	Cost is reasonable. No alternative quotes provided. Full details in statement	<ol style="list-style-type: none"> <li>1. Inadequate management (including commissioning and verification processes) of repairs and maintenance resulted in recurring issues and excess expenditure.</li> <li>2. The Respondent operates in a way which appears to be a deliberate attempt to evade any consultation process.</li> <li>3. Evidence provided does not prove that the level of expenditure incurred is reasonable and that good value for money has been secured for the leaseholders.</li> <li>4. No evidence provided to confirm that policies and procedures to secure value for money operate (including market testing/procurement/verification processes).</li> </ol>	We are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable. Mr Gurvits was able to explain his companies process for finding contactors and using the same. The Tribunal found on the basis of this evidence that appropriate steps were taken to identify suitable contractors who undertook works at a suitable cost.
Common Parts Electricity	£1,168.69	Cost is reasonable. No alternative quotes provided. Full details in statement	<ol style="list-style-type: none"> <li>1. Inadequate management (including commissioning and verification processes) of repairs and maintenance resulted in recurring issues and excess expenditure.</li> <li>2. Evidence provided does not prove that the level of expenditure incurred is reasonable and that good value for money has been secured for the leaseholders.</li> <li>3. No evidence provided to confirm that policies and procedures to secure value for money operate (including market testing/procurement/verification processes).</li> </ol>	We are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable. Mr Gurvits was able to explain his companies process for finding contactors and using the same. The Tribunal found on the basis of this evidence that appropriate steps were

				taken to identify suitable contractors who undertook works at a suitable cost.
Scaffolding, Alarm Scaffolding, Roof valley works etc	£7,741.20	Cost is reasonable. No alternative quotes provided. Full details in statement	<ol style="list-style-type: none"> <li>1. Inadequate management (including commissioning and verification processes) of repairs and maintenance resulted in recurring issues and excess expenditure.</li> <li>2. Evidence provided does not prove that the level of expenditure incurred is reasonable and that good value for money has been secured for the leaseholders.</li> <li>3. No evidence provided to confirm that policies and procedures to secure value for money operate (including market testing/procurement/verification processes).</li> <li>4. We agree with the Tribunal's decision at a case pursued by another leaseholder in our development (case reference: CHI/45UG/LSC/2021/0037) that the Respondent's practice of treating parts of the work from the same contractor for the same job separately is clearly wrong and appears to be a deliberate attempt to evade the consultation process.</li> </ol>	Save for the sum of £2,912.40 which the Respondent conceded should not be a service charge item we are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable. We have explained in the body of the decision that in our judgment these works included the cost of inspection (which included the cost of erecting scaffolding) and then separately but linked the costs of undertaking required repairs.
Insurance March 2020/2021 + Brokers fee	£7,010.61	Cost is reasonable. No alternative quotes provided. Full details in statement	<ol style="list-style-type: none"> <li>1. The invoice provided is only for £6,690.61.</li> <li>2. This equates to £409 per leaseholder (above £250 each) yet no consultation process was conducted with leaseholders.</li> <li>3. Evidence provided does not prove that the level of expenditure incurred is reasonable and that good value for money has been secured for the leaseholders.</li> <li>4. No evidence provided to confirm that policies and procedures to secure value for money operate (including market testing/procurement/verification processes).</li> </ol>	We are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable. Mr Gurvits was able to explain how brokers are used and confirmed no commissions are payable to his company or the Respondent. No alternative quotes were obtained or other evidence to challenge the insurance charged.
Various Electrical Repairs	£4,701.44	Cost is reasonable. No alternative quotes provided. Full details in statement	<ol style="list-style-type: none"> <li>1. Inadequate management (including commissioning and verification processes) of repairs and maintenance resulted in recurring issues and excess expenditure.</li> <li>2. The Respondent operates in a way which appears to be a deliberate attempt to evade any consultation process.</li> <li>3. Evidence provided does not prove that the level of expenditure incurred is reasonable and that good value for money has been secured for the leaseholders.</li> <li>4. No evidence provided to confirm that policies and procedures to secure value for money operate (including market testing/procurement/verification processes).</li> </ol>	We are satisfied the cost was reasonable. No evidence that works not undertaken to a reasonable standard or that the cost was not reasonable. Mr Gurvits was able to explain his companies process for finding contactors and using the same. The Tribunal found on the basis of this evidence that appropriate steps were taken to identify suitable contractors who undertook works at a suitable cost. We accept the evidence of Mr Gurvits that different works were undertaken throughout the year and so no consultation was required.
Management fee December 2019/2020	£5,304.00	Cost is reasonable. No alternative quotes provided. Full details in statement	Charge overstated. Respondent has confirmed that it was only the managing agent for part of the year and yet a full year's cost has been charged.	We are satisfied the cost was reasonable. No alternative quotations were provided and plainly Mr Gurvits' company undertook management throughout this period of time.
First Defence	£330.00	Cost is reasonable. No alternative quotes provided. Full details in statement		We are satisfied the cost was reasonable. No evidence was submitted which challenged this charge and we find the

				Respondent is entitled to contract for the supply of this service.
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\*Comments may include

1) The charges are not payable under the lease?; 2) Reasonable in amount / standard; 3) Charges not correctly demanded?