



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

**Case reference** : **LON/00AZ/LSC/2021/0326**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **61B Lewisham Hill, London SE13 7PL**

**Applicant** : **Ms N Peers**

**Representative** : **In person**

**Respondent** : **Assehold Limited**

**Representative** : **Eagerstates Ltd**

**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 of the Commonhold and Leasehold Reform Act 2002**

**Tribunal members** : **Judge Pittaway  
Judge McKeown  
Mr K Ridgeway MRICS**

**Date of hearing** : **21 July 2022**

**Date of decision** : **17 August 2022**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote 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 no-one requested the same and all issues could be determined in a remote hearing.

The Applicant, Ms Peers, appeared in person and the Respondent was represented by Mr Linnane of LPC Law Advocates who stated that he had been instructed at short notice by Mr Gurvits of Eagerstates Ltd. Mr Gurvits did not attend the hearing.

Ms Peers questioned whether it was possible for the hearing to proceed in Mr Gurvits' absence. The tribunal adjourned briefly to consider this but in the circumstances determined that it would be disproportionate not to proceed with the hearing, and that it would have regard to the fact that Mr Gurvits did not attend the hearing. In particular it would have regard to the evidential weight to be placed on his undated statement of case made on behalf of Eagerstates Ltd, as evidence of fact.

The documents that the tribunal was referred to were in an electronic bundle of 157 pages. The bundle contained an e-mail from Ms Peers dated 15 July 2022, an undated statement of case from Eagerstates Ltd and a Scott Schedule completed by both parties. Ms Peers confirmed to the tribunal that her e-mail and the Scott Schedule could be adopted by the tribunal as evidence of fact. Mr Linnane cross-examined Ms Peers on her evidence.

The bundle contained no witness statement from anyone on behalf of the Respondent.

In addition the parties had provided the tribunal with the following previous decisions of the tribunal;

104 Tollington Way LON/00AU/LAC/2016/0009  
Newton House LON/00AH/LAC/2018/0004 (*'the Newton case'*)  
7 Oaklands Road LON/00AF/LAC/2019/0016; and  
1A Brewery Road LON/00AF/LAC/2021/0012. (*the 'Brewery Road case'*)

The tribunal heard submissions from Mr Linnane and Ms Peers.

It became apparent during the hearing that one of the issues between the parties was whether Ms Peers had paid the sum of £269.48, the balancing charge for the service charge year to September 2018, and the sum demanded on account for one half of the following service charge year of £905.35. The tribunal therefore directed that Ms Peers should, within seven days provide the tribunal with evidence that these sums had been paid, with the respondent afforded the opportunity to comment on that evidence within seven days

thereafter. Ms Peers provided a bank statement evidencing the payment to Eagerstates on £905 in a redacted bank statement for the period 7 March to 20 March 2022. In her covering e-mail of 21 July Ms Peers stated that she had not paid the £269.48 as she had been unaware that this sum was due from her. On 5 August Eagerstates confirmed that the payment of £905 had been made.

In reaching its decisions the tribunal has had regard to the evidence before it the submissions it heard, and the evidence and statement subsequently received from Ms Peers.

### **Decisions of the tribunal**

- (1) The tribunal makes the determinations as to liability to pay and reasonableness of service charge and administration fees as set out under the various headings in this Decision
- (2) 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 can be passed to the lessees through the service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, being the reimbursement of the tribunal fees paid by the Applicant.

### **The application**

1. The Applicant seeks 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 administration charges payable by the Applicant. The year for which the determination is sought is stated in the application to be 2018.
2. The Applicant also seeks an order under section 20C of the 1985 Act that the costs in connection with the proceedings before the tribunal are not to be included in the service charge payable by the Applicant and the reimbursement of the fees incurred in making the application to the tribunal and for the hearing.

### **The background**

3. The property which is the subject of this application is described in the application as one of eight flats in a detached house. 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.

4. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Applicant's proportion of the 'internal' service charge items is 2.5% and of the 'external' service charge items is 13.4%. The specific provisions of the lease and will be referred to below, where appropriate.
5. On 1 April 2019 Canonbury Management took over the management of the property, appointed following a determination by the tribunal (LON/00AZ/LOA/2018/0002) that 61 Lewisham Hill RTM Company Ltd was entitled to acquire the right to manage the house of which the Property forms part.

### **The issues**

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability of service charges for the year 2018, as set out in an invoice from Eagerstates dated 3 September 2018.
  - (ii) The payability of a charge to the Respondent for collecting the ground rent from March 2019 to March 2021 of £180.
  - (iii) The payability and reasonableness of administration charges incurred by the Respondent in seeking to recover the above sums from the Applicant.
  - (iv) Whether the tribunal should make an order under section 20C of the 1985 Act.
  - (v) Whether the tribunal should order the Respondent to refund the Applicant her application and hearing fees, totalling £300.
7. Ms Peers did not dispute that a management charge of 15% of service costs was payable on whatever service charge was determined to be due.
8. 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.

### **Service charges for 2018**

9. The service charge year for the property runs to September in every year so that the tribunal have considered the service charge year September 2017/2018 and September 2018/2019.

### **The tribunal's decision**

10. The tribunal determines that the amount outstanding, and payable by the applicant, in respect of the service charge year to September 2018 is £255.23, being the balance of the service charge due for that year, less the incorrect charge for Castle Water.
11. The tribunal determines that the actual service charge for the half year to March 2019 payable by the applicant is £1,157.14 of which the applicant has already paid £905.35, leaving a balance due of £251.79.

### **Reasons for the tribunal's decision**

12. The bundle before the tribunal contained the service charge account prepared by Eagerstates dated 3 September 2018. This showed the Applicant's share of the service charge for the year September 2017/2018 to be

• External	£1,763.40
• Internal	£86.56

From this statement it is clear that the management fee of 15% is only charged on the external service charge.

The account states that the Applicant had paid £1,580.49 on account, leaving £269.48 due.

The internal charge included costs of £570.21 payable to Castle Water, of which cost £14.25 was payable by the Applicant. It was agreed at the hearing that the inclusion of any charges from Castle Water in the accounts was incorrect.

13. The service charge account of 3 September 2018 also included a demand for the payment of one half year's estimated service charge for the year September 2018/2019 in the sum of £905.35. Again this included provision for an annual payment to Castle Water of £600. The sum demanded of the Applicant would have included her half year share of this sum of £7.50.
14. The bundle contained a document headed 'AH332 61 Lewisham Hill' which stated that it showed 'Expenses since 29 September accounts'. This showed a total actual expenditure for the house of £11,244.25.
15. The Applicant was not challenging whether the above demands contained all the information required by law.

16. The bundle before the tribunal contained a 'Reconciliation of Account' prepared by the Applicant. Of the £11,244.25 this accepted that the following sums were properly due, supported by invoices provided by the Respondent

Item	Total cost	Applicant's share
Electricity (internal)	£223.50	£5.59
Drain clearance (external)	£212.50	£28.48
Door entry system (internal)	£144	£3.60
Window cleaning (external)	£158.40	£21.23
Light investigation (internal)	£139.08	£3.48
FHS test (internal)	£54	£1.35
Totals		
External	£370.9	£49.71
Internal	<u>£560.58</u>	<u>£14.02</u>
	<u>£931.48</u>	<u>£63.73</u>

17. The 'Reconciliation of Account identified the following items of service charge as being challenged;

Item	Total cost	Applicant's share
Cleaning	£1,390.86	£34.77
Gardening	£1,736.40	£232.68
Insurance	£5,457.51	£731.31
Emergency line	£96	£12.86

Section 93 costs	£360	£48.24
TOTAL	£9,040.77	£1,059.86

18. The applicant did not challenge the reasonableness of the actual fortnightly cleaning and gardening invoices included in the bundle but submitted that such charges were not incurred as there was no 'extra' cleaning or gardening in the period September 2018 to March 2019. In relation to the charge for insurance she submitted that this was double-counting as this had already been paid in advance.
19. It became clear during the hearing that the Applicant's challenge of the payability of these sums was because she understood these sums to be payable in addition to the estimated service charge of £905.35 which she submitted she had already paid. Conversely Mr Linnane submitted that the Respondent's claim was based upon the fact that neither the balancing payment for the service charge year to September 2019 nor the estimated service charge for the half year to March 2019 had been paid by the Applicant. Mr Linnane confirmed to the tribunal that the sums demanded in the invoice for the actual costs incurred after September 2018 were a reconciliation of the account and not additional to the estimated charges.
20. As directed Ms Peers has provided the tribunal and the Respondent with a redacted bank statement from 'first direct' stated to relate to the period 7 March to 20 March 2022 which shows a payment to 'Eagerstates AH332 B Final' of £905.35. In its response Eagerstates confirmed that this payment had been made in 2022.
21. There are two other service charge costs challenged by the Applicant in the final account submitted by the Respondent. The first is the charge for the provision of an emergency line. Ms Peers submitted that the line does not exist and there had never been a charge for such a line in previous years. The tribunal notes that there was no supporting invoice for this charge in the bundle and Mr Linnane was not able to clarify the position. The tribunal accept Ms Peers' evidence and finds that the charge is not payable.
22. The final service charge cost challenged by the Applicant was a charge for £360 in relation to costs in connection with the Right to Manage application. Ms Peers stated that this had been paid by Canonbury Management and the bundle contained an e-mail from them dated 29 June 2022 confirming that they had paid this.

23. The tribunal find that costs in connection with the Right to Manage application are not service charge costs but rather costs payable under section 88 of the 2002 Act. Accordingly this sum is not payable by way of service charge.
24. The Applicant was also challenging the management fee of £1,272. The Applicant accepted that the managing agent could charge a management fee of 15% of the total service charge. This was not challenged, only the actual amount because it was based on a percentage of costs that were not payable by way of service charge. The tribunal note that in fact the management charge of 15% is only levied on the 'external' service charge.
25. Accordingly the actual service charge payable by the applicant for the half year to March 2019 is

Item	External internal	or	Tenant's share	Total
Electricity	Internal		£5.59	
Door entry system	Internal		£3.60	
Light investigation	Internal		£3.48	
FHS test	Internal		£1.35	
Cleaning	Internal		£34.77	
Total	Internal			£48.79
Gardening	External		£232.68	
Insurance	External		£731.31	
Total	External			£963.78
Management fees on external items at 15%				£144.57
<b>TOTAL DUE</b>				<b>£1,157.14</b>

26. The applicant has already paid the estimated service charge on account of £905.35. The balance due from the applicant is therefore £251.79 for the half year to March 2019.



## **Fee for collecting ground rent**

### **The tribunal's decision**

27. The tribunal determines that a fee is not payable for collecting the ground rent.

### **Reasons for the tribunal's decision**

28. The Respondent's statement of case referred the tribunal to 'Clause B of the Service Costs Schedule of the Lease' as enabling the landlord to charge for the collection of rent and that this clause provides that as part of the service charge an agent can be appointed to deal with the building for any function the landlord desires that it is reasonable to deal with. The Respondent's statement referred to the fee being for checking the amount due, issuing a section 166 Notice, dealing with queries, monitoring to ensure payment, recording when payment received, monitoring for any non-payment and accounting and reporting to the freeholder.

29. The Respondent's reference to 'Clause B' is not clear but from the subsequent statements of the Respondent it would appear that it was referring to paragraph 1(b) of Part 2 of Schedule 7 of the Lease.

Paragraph 1(b) provides for the recovery of costs, fees and disbursements reasonably and properly incurred of

At sub-paragraph (i) 'managing agents employed by the landlord for the carrying out and provision of Services...'; and

At sub-paragraph (iii) 'any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.'

30. Mr Linnane also referred the tribunal to paragraph 7(b) of Schedule 4 of the lease which provides for the payment by the tenant of costs and expenses 'reasonably and properly incurred by the Landlord...in connection with or in contemplation of...(b) preparing and serving any notice in connection with this lease under section 146 or 147 of the law of Property Act 1925 or taking proceedings under either of these sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court.'
31. Mr Linnane referred the tribunal in particular to the decision in the *Newton case* as authority for the proposition that the Respondent was entitled to charge a fee for collecting the ground rent. This case was also

referred to in the Respondent's statement of case in which it said that the wording in the *Newton case* lease was almost identical to the wording in the lease of the Property. This was not substantiated by production of a copy of the *Newton case* lease and the decision in the *Newton case* does not set out the wording.

32. The tribunal heard evidence from Ms Peers that Mr Gurvits had failed to cash the ground rent cheques that he had been sent, except for one. Ms Peers referred the tribunal to the decision in the *Brewery Road case* as authority for the proposition that administration fees for demanding ground rent are not payable.
33. The tribunal is not bound by the decisions of other First tier Property Tribunals although these may provide guidance.
34. The lease contains a covenant, at paragraph 1.1 of Schedule 4 to pay the Rent, which is defined as £300 per annum for the first 25 years of the Term, rising to further fixed amounts every 25 years thereafter. It makes no provision for the landlord to charge for the collection of the Rent. Accordingly the fee is not recoverable under this paragraph.
35. Paragraph 2.1 of Schedule 4 contains the obligation to pay the Service Charge, being the tenant's proportion of the Service Costs listed in Part 2 of Schedule 7. The tribunal find that a fee for collecting the ground rent is not recoverable by the Respondent under paragraph 1(b) of Part 2 of Schedule 7 of the Lease. "Rent" and "Service Costs" are distinct items of charge under the lease. It is not recoverable under paragraph 1(b)(i) of Part 2 of Schedule 7 of the Lease as Eagerstates are no longer providing the "Services" in connection with the building; this is now undertaken by Canonbury Management. It is not recoverable under Paragraph 1(b)(iii), which does not refer to the collection of "Rent", it refers to persons retained to act in connection with the Building and the Services. The fee is therefore not recoverable under these paragraphs.
36. The tribunal's finding is consistent with the Upper Tribunal decision in *Philipp Stampfer v Avon Ground Rents Ltd* [2022] UKUT 68 (LC) (not referred to by either party) where the Upper Tribunal found that the landlord's deemed expenses for collecting rent could not include a charge for giving a section 166 notice, even in a lease where there was an express clause permitting the recovery of costs incurred in the collection of sums due under the lease.
37. As to the other reasons given by Eagerstates for charging an administration fee under the lease for collecting the rent, even if the fees had been recoverable the tribunal finds on the evidence before it that Eagerstates had not monitored the payments made by Ms Peers as it had failed to cash the cheques which she had sent. And the rent is fixed for 25 years, of which Eagerstates was aware before it sought to

charge an administration fee. Accordingly the tribunal would have found that administration fee was unreasonable.

**Other administration fees.**

**The tribunal's decision**

38. The sums levied by Eagerstates and the Debt Collection Agency are 'administration charges' within the definition in the purposes of Paragraph 1(1)(c) of Schedule 11 of the 2002 Act.

39. The charges of £120 each levied by Eagerstates on 6 October 2020, 11 January and 7 April 2021 were reasonable, and are payable by the Applicant.

40. The debt referral fee of £216 and the fee of £474 levied by the Debt Recovery Agency as a 'correspondence fee' are not reasonable and are not recoverable.

**41. Reasons for the tribunal's decision**

42. The Scott Schedule lists the following administration charges

- Three charges of £120 levied by Eagerstates on 6 October 2020, 11 January 2021 and 7 April 2021, 'notice of proceedings'.
- A fee of £216 being a debt referral fee
- A fee of £474 levied by the Debt Recovery Agency as a 'correspondence fee'.

43. In the Scott Schedule Ms Peers refers to a demand of £3582.78 for administration fees set out in a statement of 29 April 2022, but there was no such statement in the bundle before the tribunal. The tribunal has therefore treated the sums in question as totalling £1,050. In the Scott Schedule Ms Peers stated that she considered these charges to be unfair, as they relate to disputed costs.

44. In its statement of case Eagerstates referred the tribunal to clause 7.1 of the lease which permits the landlord to seek to forfeit the lease for non-payment of rent or service charge, as part of which process the landlord is required to obtain judgement or admission of the amounts. Eagerstates referred to a management agreement, included in the bundle before the tribunal as evidence of the level of its three fees of £120. It also gave a breakdown of the Debt Agency's fees, as set out above but did not provide supporting invoices.

45. At the hearing Mr Linnane referred the tribunal to Schedule 4 of the lease which sets out the tenant's obligation to pay rent and service

charge, (paragraphs 1 and 2) and to pay Landlord's costs paragraph 7(b) (referred to above). Mr Linnane also referred the tribunal to paragraph 1(b)(iii) of Part 2 of Schedule 7, also referred to above.

46. Paragraph 1(1) of Schedule 11 of the 2002 Act defines an administration charge as follows;

*'(1)In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*

*(a)for or in connection with the grant of approvals under his lease, or applications for such approvals,*

*(b)for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,*

*(c)in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*

*(d)in connection with a breach (or alleged breach) of a covenant or condition in his lease.'*

47. It was common ground between the parties that costs incurred by the landlord in connection with the failure by the tenant make a payment of rent or service charge to are administration charges under Paragraph 1(1)(c) of Schedule 11 of the 2002 Act. The tribunal finds that its jurisdiction derives from the 2002 Act not paragraph 7(b) of Schedule 4.

48. Paragraph 2 of Schedule 11 of the 2002 Act provides that an administration charge is only payable to the extent that it is reasonable.

49. Ms Peers thought the fees were unfair as they related to disputed costs. Her approach may have been dictated by the misapprehension that there were two sets of charges; the estimated charges, and the final invoice on top of those (a confusion was probably caused by Mr Gurvit's failure to provide an explanation). However the tribunal note that Ms Peers did not pay even the demand for the estimated service charge for the half year to March 2019 until March 2022. In the circumstances it is reasonable that Eagerstates incurred administration fees in seeking to recover this sum. Ms Peers did not challenge the actual amounts charged and the tribunal therefore finds these to have been reasonable.

50. As a professional managing agent Mr Gurvits of Eagerstates will, or should, know that no forfeiture is possible for non-payment of service charge until liability to pay/ reasonableness has been determined by agreement/or the tribunal. The tribunal therefore find that it was premature and not reasonable for him to instruct a Debt Recovery Agency when he did. Eagerstates should have applied to the tribunal for

a determination as to the reasonableness of the amount of service charge the Respondent was demanding. The Debt Recovery Agency fees are therefore not reasonable and not recoverable from the Applicant.

### **Application under s.20C and refund of fees**

51. The Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing<sup>1</sup>.
52. If the Respondent had applied to the tribunal for a determination of the reasonableness of the fees demanded, as contemplated by the tribunal in paragraph 50, it would have been the Respondent who would have incurred these fees, not the Applicant. Having heard the submissions from Ms Peers as to Eagerstates failure to communicate with her, the tribunal find it unlikely, taking into account the circumstances of this case, that it would have ordered the Applicant to refund the Respondent's fees.
53. The tribunal orders the Respondent to refund the fees of £300 paid by the Applicant.
54. In the application form at the hearing, the Applicant applied for an order under section 20C of the 1985 Act, so that the Landlord could not pass any costs incurred in connection with the proceedings through the service charge, and both parties made submissions to the tribunal in this regard.
55. Since 61 Lewisham Hill RTM Company Ltd took over the management of the building of which the Property forms part the Respondent no longer manages the building. Accordingly the tribunal finds that any costs which the Respondent landlord has incurred are not Service Costs for the purposes of the lease, and therefore cannot be recovered from the Applicant by way of service charge. If they could be, for the avoidance of doubt, the tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings are not passed to the lessees through the service charge. The tribunal further finds that if such costs are administration charges they would not be reasonable charges, in the circumstances of this case, to recover from the Applicant.

**Name:** Judge Pittaway

**Date:** 17 August 2022

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

### **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).