



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

**Case Reference** : **CHI/29UQ/LSC/2014/0007**

**Property** : **Flat 12 Smarden Place, Maidstone Road, Paddock Wood, Kent TN12 6BT**

**Applicant** : **Southern Land Securities Ltd**

**Representative** : **Mrs J Di of Hamilton King –  
Managing Agents  
Mr M Mason – Counsel**

**Respondent** : **Mr G & Mrs M Hendrick**

**Representative** : **None**

**Type of Application** : **Service Charges - Section 27A of the  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Mr R Athow FRICS MIRPM - Chair  
Mr D Dovar – lawyer member  
Miss A Hamilton-Farey LLB FRICS  
FCI Arb – surveyor member**

**Date and venue of  
Hearing** : **7<sup>th</sup> May 2014  
Paddock Wood Masonic Hall,  
Maidstone Road, Paddock Wood**

**Date of Decision** : **6<sup>th</sup> June 2014**

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**DECISION**

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## **Decision**

1. The sum of £1,171.51 is not due.
2. The sum of £528.75 is not to be refunded.
3. The sum of £1,278.71 is due for the financial year ending 31<sup>st</sup> December 2011 taking into account sums already paid in that year. This is detailed in the Schedule attached hereto.
4. The sum of £540.17 is due for the financial year ending 31<sup>st</sup> December 2012 taking into account sums already paid in that year. This is detailed in the Schedule attached hereto.
5. The sum of £829.74 is due for the financial year ending 31<sup>st</sup> December 2013. This is detailed in the Schedule attached hereto.
6. The total sum due from the Respondents is £2,648.61 as shown in the Schedule at the end of this decision.
7. No interest is chargeable under the terms of the lease.
8. Legal costs are not recoverable under the terms of the lease.
9. An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

## **Background**

10. The Applicant is the freeholder of Smarden Place, Maidstone Road, Paddock Wood, Kent TN12 6BT, of which the subject property forms part. The Respondents are lessees of the subject property. The property is managed by Hamilton King.
11. The Applicant commenced proceedings in the County Court (Claim No.3YQ51184) against the Respondents claiming payment of ground rent, service charges, costs and interest.
12. By an Order dated 14<sup>th</sup> November 2013 the question of service charges payable by the Respondents to the Applicant and the subject of the claim was transferred to the First-Tier Tribunal (Property Chamber).
13. Directions were issued on 16<sup>th</sup> January 2014 and statement of case and a bundle of documents were provided by SLS Legal Services.

## **Inspection**

14. On 7<sup>th</sup> May the Tribunal inspected the outside and internal common parts of the block. The inside of flats 12 (first floor) and 16 (second floor) were inspected.
15. The Tribunal were shown the extent of dampness to the chimney breast on the South side of the living room of flat 12. This was extensive, affecting the whole of the chimney breast and had caused the plaster to perish.
16. The Tribunal were shown the extent of dampness to the chimney breast on the South side of the living room of flat 16. This is immediately above the chimney in flat 12. Similar dampness was seen in this area.
17. A similar problem was shown to the Tribunal in the kitchen of flat 16. Once again the dampness was to a chimney breast but this time it was on the North wall of the room.
18. The small bedroom in flat 16 had signs of water penetration and the walls and ceiling were stained from this.
19. The decorations of the communal hall, stairs and landings were inspected and various items claimed as defective or poor workmanship were pointed out to the Tribunal, as was the poor state of the carpet. The woodwork was not gloss finished.
20. The Respondents showed the Tribunal the area of gutter that was one part of their claim against the landlord, as well as the general state of the exterior and roof. This part of the inspection was made at ground level.
21. The Tribunal also noted that some of the chimney pots were not capped, whilst others were. Some of the uncapped ones were on the stack above the areas of damp to the living rooms in flats 12 and 16.
22. The Tribunal were shown the fire alarm system and the service/inspection record book.

Some flashing repairs appeared to have been carried out to the North stack above the kitchen of flat 16, but the roof valley nearby had moss and debris in it. The North roof elevation in this area was covered in moss and algae. There was staining to this stack.

## **Hearing**

23. The hearing was attended by Mrs J Di of Hamilton King and Mr M Mason, counsel for the Applicant. Mr and Mrs Hendrick were present and Mrs Hendrick represented them. Also at part of the hearing were two other lessees – Mr McKinnon and Mrs Smith from flat 16 and Mr Tully of flat 8.
24. The Tribunal noted that both sides had failed to comply with the Directions.

25. The Applicant has failed to include
  - a. a breakdown of the sum of £1,171.51
  - b. the budgets and service charge accounts for **all** the years in dispute (Direction 2) .
  - c. any demands for payment, meaning service charge demands. (Direction 2) .
  - d. service charge accounts for 2010, or earlier years in dispute.
26. The Respondents have not supplied
  - a. any alternative quotes in support of their case (Direction 3).
  - b. Supplementary replies to the Applicants Statement of Case (Direction 5).

### **Prior Service Charge arrears b/f**

27. The Tribunal questioned the opening figures for the reconstituted service charge account. In particular the sum of £1,171.51, which appeared in respect of past service charges was queried. The Tribunal was informed that there had been a change of software system within the managing agent's offices in January 2011. Full details of the sum of £1,171.51 had not been entered onto the new system individually, but rather as a global sum. As a result they were unable to provide any evidence on what this referred to. They offered to obtain the details of this during the lunch break, but subsequently only put forward the Property expenditure sheets for the financial year ending 31<sup>st</sup> December 2006. This was of no assistance to the Tribunal.

### **2010**

#### *Refund of £528.75*

28. The Respondents stated that there had been a previous hearing in 2009 when the Tribunal decided that the surveyors fees of £528.75 had been charged twice, once within the major works amount which was then disallowed as there had not been any S20 consultation, and elsewhere in the accounts. That point had been accepted by the managing agents at the hearing. The hearing decided that this sum should be refunded. However, the money had never been refunded.
29. The Applicants stated this concession was an error and that in fact, prior to the previous application, this money had been credited. As they had not supplied any evidence of this they accepted this could not be proved.
30. The Applicants claimed in their statement (p 45) the Tribunal had not understood the accounts. They now accept this claim is incorrect.

**2011**

*Guttering repairs*

31. The Applicants stated that they had received a report of broken gutters and they had obtained quotes from various contractors for carrying out repairs. The cheapest quote was below the S20 consultation limit, but they had a fixed price quote from one contractor in the sum of £888.00 (at page 47) which had been circulated to the lessees.
32. Mrs Hendrick stated that there had been phone calls and e-mail correspondence in March 2011 in which she pointed out that the only disrepair was that the gutters had come apart and just needed pushing back together, so scaffolding was not necessary.
33. Mrs Hendrick stated that when the contractors arrived they saw the slipped joint and used a ladder that was in the rear garden, belonging to a lessee, and did not need to use the scaffolding they had on their lorry.
34. As a result she felt the bill for £888.00 was excessive for the work carried out.
35. The invoice at page 160 of the bundle shows the cost of labour at £288.00 (£240.00 + VAT) and materials of £600.00 (£500 + VAT).
36. The Applicants did not know what the material costs related to but assumed it to be scaffolding. Part of the cost could be for the hire and partial erection of the scaffold which had begun before they realised there was a ladder which would give the access required instead.
37. The Respondents accept that some of the scaffolding was erected, but challenged the cost of the work. They felt that the cost was unreasonable for the actual works undertaken.
38. The Applicants stated that they had spoken to the contractor to attempt to obtain a reduction in the bill, but no reduction was agreed as the contractor stated it was a fixed price quote. They had reported this to the lessees (pages 100-102).

*Internal decorations*

39. The Respondents put forward their case on the internal decoration of common parts. This had been in the sum of £3,300.00 made up of 2 parts, £3,000 for the contract and £300 for the managing agents' supervision fee (page 52).
40. They stated that the work had been carried out to a poor standard and that Mr Cummings from Hamilton King eventually came out to look at the work and agreed it was not up to a reasonable standard. He also agreed to get the carpets cleaned where paint marks had appeared.

41. The contractor returned to make good the poor quality workmanship, but still did not gloss the woodwork. The Respondents were led to believe a gloss finish was included within the specification.
42. A copy of the specification was not included in the bundle and would have been of use to the Tribunal.
43. The Applicants stated that the work had now been carried out to a reasonable standard and there have been no subsequent complaints. The first time this was raised again was in 2013 when the debt owed by the Respondents was being chased.
44. The Respondents could not fully assess what sum should be paid. They were conscious of the fact that the woodwork had not been glossed. They accepted that the works were carried out three years ago and there is some subsequent wear and tear due to the passage of time.
45. The Applicants accept that a specification had not been supplied, no notes of on-site inspections during the work and no signing off sheet has been included in their bundle, yet feel they are still entitled to their 10% fee.
46. The Respondents felt that the management fee for these works should not be allowed because of the lack of supervision and premature payment of the account without it being signed off.

#### *Alarm/lighting*

47. The alarm/emergency lighting costs of £1,576.53 was challenged by the Respondents. They stated that the 2004 quote at page 54 allowed for quarterly charges, but only annual inspections were carried out.
48. The Applicants showed the contract to be £536.53 for the year (page 134) and confirmed that annual inspections were carried out as was required in a block of this size. There had been two visits by Tesla Electrical during the year, one for £160.00 and another for £880.00. These were as a result of a nearby lightning strike which damaged the main panel which subsequently required replacement. As a result they were of the opinion that the sum was reasonable and due under the service charge accounts.
49. The Applicants confirmed that they had not made an insurance claim on this, and were not sure if it was covered under the insurance policy. The Applicants agreed to obtain a copy of the insurance policy over the lunch break, but failed to do so.
50. The ICS receipt at page 134 states it was also a maintenance rental but the Applicants confirmed that the ICS contract was for the service of the alarm only. ICS were in agreement that Tesla, being a local

electrical contractor, was better placed to give a rapid response to call-outs.

### *Insurance*

51. The Respondents felt that the insurance premium for the block was excessive, but had not supplied the Tribunal with any evidence of this. They had frequently asked Hamilton King for a copy of the current policy and premium receipt, but this had failed to materialise in spite of promises to post them.
52. The Applicants agreed to ensure that a copy was sent immediately, but accepted that they had not included a copy in the bundle.
53. The respondents stated that they had been informed by Hamilton King that the roof was not insured, but the Applicants confirmed to the Tribunal that this was not correct and the roof was covered for normal perils.
54. A group of lessees had written a joint letter to Hamilton King complaining about the level of premium and that a reply had been received (pages 97 – 99). The Respondents asked how the Applicants went about seeking competitive quotes.
55. The Applicants stated that they cover all the blocks under their control in a block policy with four renewal dates during the year. This goes out to tender each year. Bad claims are reflected in the excesses for each individual block. The excess for this block is £375 which is the standard excess. The Applicants have not published the result of the tender process, but then they have never been asked for this. Hamilton King do not receive any commission, but it was not known if the freeholder received commission.
56. The Respondents had sought advice from LEASE and a leaflet they had received indicated to them the landlord was required to notify the lessees if they proposed to appoint a new managing agent. They had not been informed of this when Hamilton King took over. However, they now accepted that this was not the case, but referred to the change of freeholder.

### *Management fees*

57. The Respondents felt that the managing agents' fees were excessive for the small size of the block and the little input made by Hamilton King. They do very little for their money and seldom visit the block. The only way they could get any response was to withhold payment. They had not got comparable quotes so could not say if the fees charged were the market rate. They were in negotiation with the freeholder to take over the management of the block themselves.

58. The Applicants stated that they had tried to correspond with the lessees, in particular regarding the major works, but the residents had asked for this to be deferred until 2014. They accepted the lessees were in negotiation to take over the management themselves. Regarding correspondence received from the lessees they had replied but failed to get any response to their letter in spite of three follow-up letters. Therefore the failure to communicate was not entirely of their making.
59. Hamilton King confirmed they were employed on an annual contract and that it rolled over. They were not aware whether or not it was in compliance with the Section 20 consultation requirements. The landlord was entitled to appoint a managing agent and that reasonable fees were recoverable through the service charge account. Someone needs to be employed to manage the building and the accounts.
60. When asked, Hamilton King stated that there is a specification of the works included in the management fee, but this was not published to lessees. They confirmed that although the freeholders and the managing agents have the same directors, they operate as two totally separate entities. It was not known how long the management arrangement had been in place.
61. The Applicants confirmed there was a planned maintenance programme in place and the last review was in 2010 when it highlighted the need for the proposed major works.
62. The main problem from the managing agent's point of view was one of lack of cashflow due to a large amount of arrears mainly from the Respondents. This had been one of the main reasons preventing the works from going ahead.
63. The Applicants were of the opinion that the management fees charged were within an acceptable range of £230 to £250 per flat.

## **2012**

### *Alarm*

64. In the light of the earlier comments regarding the annual maintenance contract for the alarm/emergency lighting, the Respondents accepted the cost of the annual service contract, but queried why not all of the flats were connected. They felt that without a full alarm cover the block was at risk from unmonitored areas and might not be covered under the insurance policy.
65. The Applicants confirmed that Zone 2 is unused covering Flat 18a as the lessee removed the wiring because the tenant was a heavy smoker and did not want to set off the alarm unnecessarily. They confirmed they had written to the lessee concerned asking him to re-connect the wiring but had not received a reply. They agreed to write to the insurers to seek clarification of the cover. When a reply was received



they would forward this to the lessees. In the meantime they accepted the freeholders would be financially liable for any shortfall in the worst event.

### *Insurance and Management fees*

66. The Respondents accepted the same points regarding insurance and management fees as submitted in the previous year's submission and discussions above.

### *Surveyor's report*

67. The Respondents challenged the fee for the surveyor's report from Lewis Berkeley of £480 (page 200) as the inspection was not to the full extent of the building. For example, he had not gone into the roof space to fully assess the source of the water ingress. As a result the survey was of limited use to the freeholder in preparing the specification of major works required to deal with the problems. They had not been issued with a copy of the report. The lessees hired their own surveyor at their own expense who published a comprehensive report (pages 80 – 87), finding many more defects than the freeholder's surveyor.
68. The Tribunal noted there was no copy of the Lewis Berkeley report in the bundle.
69. The Applicants used their report to prepare the Section 20 Notice of Intention, firstly dated 20<sup>th</sup> November 2012 (page 94) and later again on 17<sup>th</sup> October 2013 (page 103).
70. The Tribunal noted the letter from Hamilton King dated 17<sup>th</sup> October 2013 (page 104) includes a paragraph "As you will appreciate until the surveyor has visited and inspected the property it is very difficult to say what actual works are required".
71. The Applicants stated that the whole matter was deferred until 2014 as a result of a letter from some of the lessees (page 95) as explained in their letter of reply dated 30<sup>th</sup> November 2012 (page 98).

### *Repairs*

72. The Respondents challenged the repairs totalling £827.34 as they had not been issued with copies of the receipts for these works. These have now been included in the bundle and the invoices from Able Group in the sum of £228.00 and S & T Electrical in the sum of £156.00 were accepted as reasonable.
73. However the invoice from QDC for £443.34 was challenged as it refers to flat 18 so should be charged directly to that flat.

74. The Applicants stated that the invoice was clear in that the reference to flat 18 was only a report of a defect. The remainder of the wording in the invoice explained exactly what work was carried out to the common drainage system and gutters. As a result this was a service charge expenditure.
75. The Respondents accepted this.

## **2013**

76. The Applicants had raised the claim in the County Court midway through the financial year and as a result had included the interim service charges due to date.
77. The Respondents had raised their objections based on the budget they had received from Hamilton King at the beginning of the financial year. At the time they prepared their case the final accounts had not been prepared or published.
78. Having finalised the 2013 accounts the Applicants felt these would be of use to the Tribunal and had included them and supporting evidence in the bundle.
79. This raised a potential problem for the Tribunal as the County Court had transferred the case part way through the year. If the Tribunal considered only the interim service charges to the date of transfer it leaves open the possibility of subsequent disputes arising from the year end accounts. By considering the year as a whole it closes this year off.
80. After consideration the Tribunal decided that it would serve a useful purpose to all parties and the County Court if it were to consider the year as a whole based on the information before it.
81. The Respondents had originally challenged the alarm/emergency lighting charge based on the budget, but now the year end accounts show £1,038.38 further queries arose.
82. As a result of the earlier explanation of the annual service contract the Respondents accepted the invoice from ICS in the sum of £590.38.
83. The Respondents challenged the invoice from Tesla in the sum of £448.00 on the basis that it should have been charged out directly to Flat 18 as it was the cost of re-connecting that flat.
84. The Applicants agreed that this looked to be the case and left it to the Tribunal to reach a decision on this.
85. The Respondents accepted the same points regarding insurance and management fees as submitted in the previous year's submission and discussions above.

86. The Respondents challenged the repairs which were made up of two separate invoices.
87. The invoice from PMC in the sum of £180.00 for repairs to flat 16 (page 223) was considered. Mr McKinnon of that flat explained that the kitchen ceiling had collapsed on 8<sup>th</sup> September 2013 due to water ingress down the chimney stack. They were away on holiday at that time but a relative had visited the flat and reported the matter to him, and then replaced the ceiling before they returned from holiday. Upon returning he reported this to Hamilton King.
88. Hamilton King accepted that it was caused through lack of maintenance to the roof and/or chimney stack which had developed a leak at some earlier date.
89. The Applicants explained they had received a report of the ceiling collapse and instructed a contractor to attend and carry out emergency repairs as it was part of the planned major works. They were unable to explain the breakdown of the invoice, not knowing what the £36.00 (£30.00 + VAT) “cost of materials” referred to. They speculated it could be fuel for the travel, or photographs. There were no photographs in the bundle. This left the sum of £144.00 (£120 + VAT) “cost of labour supplied to site” which they felt could be a call-out charge. The Applicants did not know if there was a standard call-out charge.
90. The Tribunal queried the need for an emergency call-out as the matter had been reported in September yet PMC did not attend until shortly raising their invoice on 4<sup>th</sup> November. The Applicants were unable to answer this point. It was confirmed that PMC have a local office in Maidstone and the call-out would have started from that branch.
91. The Respondents queried the need for a fire risk assessment to be carried out as per the invoice from Help and Safety at Work in the sum of £150.00 (page 224).
92. The Applicants explained that this was a legal requirement and this was done on an annual basis. Upon the Tribunal querying this, they agreed an annual report was not required, but every five years was appropriate for this block. The Respondents accepted this.

### **Interest on Arrears**

93. The Tribunal queried the charges of interest bearing in mind that at paragraph 21 of the 2009 LVT Decision that Tribunal had found interest not to be chargeable. A copy of this Decision had been handed to all parties before this hearing commenced.
94. The Applicants accepted the 2009 was correct and that they could not recover interest.

## **Legal Fees**

95. The Tribunal considered legal charges claimed on the schedule at page 22 of the bundle.
96. The Applicants were asked to explain why there was a need for the managing agents to raise a fee for instructing solicitors at the same time as the freeholder instructing a solicitor. They were unable to offer an explanation. Mr Mason explained that he was instructed by ADH Law, but the Tribunal noted that the bundle was issued by SLS Legal Services.
97. The Applicants were asked to direct the Tribunal to the clause in the lease which permitted the landlord to recover such costs from the lessees either through the service charge account or as administration charges. They were unable to find an express covenant allowing this.
98. The Applicants felt there were two roles for the solicitors; one for initial advice and one for issuing.

## **Section 20C**

99. The Tribunal sought views from the Applicants whether they felt they were entitled under the lease to recover any costs incurred in bringing the case.
100. The Applicants submitted that this was covered under paragraph 6 of Schedule 4, but accepted this refers to lessor's covenants. They were unable to refer to any clause containing an express covenant, but that paragraph 6 was sufficiently wide enough to cover the expenses incurred in recovering the debt.

## **Reasons**

101. The Tribunal considered all the documents which had been supplied by and on behalf of the parties, all that had been seen at the inspection, and all that had been heard at the hearing.
102. The Directions clearly stated that the Applicants were to provide all evidence of sums they sought to recover. Because the Applicants failed to provide any evidence in the bundle in support of the "prior SCharge arrears" item in the sum of £1,171.51, the Tribunal is unable to state that the sum is recoverable under the terms of the lease. The Applicants were questioned on this point at an early stage of the hearing. They were asked if they could get this evidence to the hearing on the day as it formed a major part of the claimed debt. They were given time during the morning session to make a telephone call to arrange for this to be e-mailed. Once it was known to the hearing that this could be done it was agreed they would arrange for the evidence to be printed off during the lunch break and given to the Tribunal for consideration in the afternoon session.

103. The evidence put forward was two pages long and was headed 'Property Expenditure ledger for 2006'. As a result this was totally inadequate for the Tribunal to assess the accuracy of the sum claimed and the Tribunal was left with no option other than to disallow the sum of £1,171,51 in its entirety.

There was no evidence to prove that the sum of £528.75 had been charged twice. The previous hearing decided that it had been charged at least once and should be refunded. This Tribunal decides on the balance of probabilities that the second sum claimed to have been charged is likely to have been included in the sum of £1,171.51. since that sum is disallowed in the previous paragraph, it cannot be refunded again.

104. In all years the alarm and emergency lighting contract is decided to be reasonable and is part of the service charge expenditure.
105. The role of managing agent should be carried out competently and to a professional standard. Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 sets out procedures for the approval of a Code of Practice which promotes desirable practices within the management field of residential property. The Royal Institution of Chartered Surveyors (RICS) has obtained approval for its "Service Charge Residential Management Code" and it is currently in its 2<sup>nd</sup> Edition. There are no other approved codes and so this is the code that is accepted as the industry norm. It sets out the standards expected of a managing agent. Failure to come up to that level of service will mean that if an agent is the subject of a complaint this code will be the standard by which the complaints are judged.
106. In all years considered in this case the Tribunal find that Hamilton King has not performed their role as managing agent to the standards expected in compliance with the RICS Code of Management Practice. They do not prepare the papers for the auditors, nor do they certify the accounts. There is no published planned maintenance programme. The number of contractors is small (there is no cleaning service for example) and so their involvement in dealing with expenditure is minimal. They do not regularly inspect contractors' work before payment and are frequently challenged by lessees on the level of the resulting bills. They only carry out infrequent inspections. They only perform a reactive role rather than the required pro-active role. By failing to supply a full service to RICS standard their fees are not justified at the levels charged. No satisfactory explanation was given for these reduced levels of performance.
107. The Tribunal decides that the level of service provided is reasonably priced at £720 per annum for the block as a whole.

108. In the absence of evidence from the Respondents the Tribunal finds that the insurance premiums are to be incurred at the levels charged in the year end accounts.
109. In the 2011 the repair costs to the alarm resulting from the lightning strike should have been the subject of an insurance claim. If this had been done there would only be the excess of £375.00 to be charged for through the service charge account. The Tribunal decides that £375 is therefore recoverable.
110. The sum of £888.00 for gutter repairs (page 160) is found to be excessive as the work actually undertaken was a simple re-connection of the gutter joints that was accessed from a lessee's ladder. The fact that the managing agent accepted a fixed price quote is considered to be bad practice as they should be aware that work often transpires to finish up different from that originally perceived to be required. This instance illustrates this point very clearly. The Tribunal find that it was a simple job that could have been done in less than one hour from a ladder and that the value of the work is £120.00.
111. The internal decoration contract was, by common agreement, not carried out to an adequate standard and the gloss finish was never given to woodwork. As a result the Tribunal decides that the value of the work is reduced to £2,500.00 which, sitting as an expert the Tribunal, considers to be the appropriate value of the works finally undertaken.
112. Similarly, the supervision was minimal, if any. The absence of proof of site inspections during the contract and the fact that lessees were left to carry out their own snagging report to Hamilton King confirms this. It took several chases for Hamilton King to come to the property to check the work and when they did it was found to be incomplete and below standard. As a result the Tribunal decides that no supervision fee is payable.
113. In the 2012 year all repairs are found to be appropriately incurred.
114. The surveyor's fees of £480.00 from Lewis Berkley in 2012 were at the time appropriately incurred. The fact that the works were not undertaken is due to the lessees requesting a deferment of the works recommended in the report. The report can be updated when it is decided to recommence the major works programme and it will assist the surveyor who prepares the specification at that time.
115. In the 2013 year the Applicants have conceded the invoice of £448.00 is not a service charge expenditure and should have been charged directly to flat 18, and is therefore to be omitted from the account.
116. The invoice for £180.00 (page 223) in 2013 mentions an emergency site visit after a ceiling had collapsed due to inclement weather. The explanation of the series of events as explained by Mr McKinnon

satisfied the Tribunal that there was no emergency call-out, and the visit from PMC could not have been until late October or early November. Their inspection resulted in them reporting the ceiling was intact (due to the lessee's relative reinstating the ceiling). The invoice refers to signs of water penetration and a quotation being sent. The Tribunal were not shown a copy of the quotation and so can only make an assumption that no work was carried out by PMC at the time of their visit to the property. As they only travelled from their Maidstone office it could not be possible that any more than one hour had been spent on site inspecting the property and preparing the quotation. The Tribunal assess this as £60.00 to be allowable within the service charge account.

117. The Respondents accepted that the fire risk assessment charged at £150.00 was a legal requirement and that this was a chargeable item under the service charge account.

### **Interest on Arrears**

118. The Applicants were unable to show the Tribunal any part of the lease which allowed them to charge interest and they accepted that none was therefore recoverable. They also accepted that they had accepted this to be the case at the previous hearing in 2009.

### **Legal Fees and Section 20C**

119. The Applicants were unable to show the Tribunal a clause in the lease which specifically allowed them to recover legal costs. Under the circumstances the Tribunal considered the submission that Clause 6 of Schedule 4 was sufficiently widely worded to allow recovery in this case. The Tribunal were not convinced that this argument was correct and accordingly decide that these are not recoverable under the lease. For the avoidance of doubt the Tribunal find that it is just and equitable in the circumstances to make an order under Section 20C of the Act because the Respondent was justified in contesting these proceedings to clarify the position. Had the Respondents' correspondence and evidence bundle been dealt with properly then probably there would have been no need for these proceedings at all, and a great deal of time and money would have been saved. The proceedings were ill conceived and the case papers poorly prepared. When evidence was required it was not forthcoming.
120. Attached is the schedule referred to in this decision. It is created in detail showing the sums allowed in the years in question, together with the proportion due from the Respondents. Set against this is the money already paid by the Respondents therefore giving the total balance due from them. This is prepared to assist all parties and the County Court Judge.

## THE SCHEDULE

	item	allowed	share due	paid	year balance	total balance due
<b>31-Jan-11</b>						
31-Jan-11	Prior Scharge Arrears b/f	£ -	£ -	£ -	£ -	£ -
<b>2011 year expenditure</b>						
accountancy		£ 265.00				
alarm/ emergency lighting	service contract-p134	£ 536.53				
	repair-p135 & 136	£ 375.00				
cleaning		£ 495.00				
electricity		-£ 198.57				
management		£ 720.00				
repairs	interceptor-158	£ 60.00				
	new soil pipe etc-159	£ 936.00				
	gutter repair-160	£ 120.00				
	repair stack+scaffold-p161/2	£ 1,008.00				
	internal decoration	£ 2,500.00				
	HK supervison fee	£ -				
insurance premium		£ 2,786.96				
<b>income</b>	23/08/11			£ 150.00		
	20/09/11			£ 150.00		
	11/10/11			£ 150.00		
		£ 9,603.92	£ 1,728.71	£ 450.00	-£ 1,278.71	-£ 1,278.71
<b>2012 year expenditure</b>						
accountancy		£ 275.00				
alarm/ emergency lighting	service contract-p175	£ 568.76				
cleaning		£ 135.00				
electricity		£ 134.07				
management fees		£ 720.00				
repairs	glass repair-p197	£ 228.00				
	electrical test-p198	£ 156.00				



surveyors fee	blocked drain- p199 Lewis	£ 443.34				
insurance	Berkeley-p200	£ 480.00				
		£ 2,777.46				
<b>income</b>	02/08/12			£ 150.00		
	03/09/12			£ 150.00		
	16/10/12			£ 150.00		
	12/11/12			£ 75.00		
		£ 5,917.63	£ 1,065.17	£ 525.00	-£ 540.17	-£ 1,818.88

**2013 year**

**expenditure**

accountancy		£ 298.00				
alarm/ emergency lighting	service contract-p213 re-connect flat 8	£ 590.38				
		£ -				
electricity		£ 131.40				
management fees		£ 720.00				
repairs	PMC call-out - p223	£ 60.00				
surveyors fees	fire risk assessment- p224	£ 150.00				
insurance		£ 2,659.86				
<b>income</b>				nil		
		£ 4,609.64	£ 829.74	£ -	-£ 829.74	-£ 2,648.61