



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

- Case Reference** : CHI/00HY/LSC/2015/0014.
- Property** : 20 Bedwin Street, Salisbury, SP1 3UT.
- Applicants** :
 1. 20/20A Bedwin Street (Salisbury) Management Limited
 2. Anne Pritchard (Flat 1)
 3. Helen Wendy Bray (Flat 3)
 4. William and Judith Dickinson (Flat 4)
 5. Matthew and Charlotte Andrews (Flat 5).
- Representative** : Miss Amanda Gurlay, Counsel.
- Respondents** :
 1. Imagine Property Rentals Limited (Flat 6)
 2. Patricia Osborne (Flat 2)
- Representative** : Mr. Richard Molton for Imagine Property Rentals Limited
Mr. Parsons for Patricia Osborne.
- Type of Application** : Liability to pay service charges, Section 27A Landlord and Tenant Act 1985.
- Tribunal Members** : Judge J G Orme (Chairman)
Mr. S Hodges FRICS (Member)
- Date and Venue of Hearing** : 6 October 2015.
The Law Courts, Salisbury.
- Date of Decision** : 21 October 2015.

Decision

For the reasons set out below, the Tribunal determines that:

1. **The total service charge payable by the leaseholders of 20 Bedwin Street, Salisbury to their landlord, 20/20A Bedwin Street (Salisbury) Management Limited, for the year ended 31 December 2014 is £6,223.00.**
2. **The amounts payable by individual leaseholders are as follows:**

Flat	Leaseholder	Amount of service charge
1	Anne Pritchard	£665.86
2	Patricia Osborne	£958.34
3	Helen Wendy Bray	£665.86
4	William and Judith Dickinson	£871.22
5	Matthew and Charlotte Andrews	£1,331.72
6	Imagine Property Rentals Ltd	£1,730.00

Reasons

Background

1. In about 2003 a block of 6 flats and maisonettes was built at 20 Bedwin Street, Salisbury ("the Property"). The flats have been sold on long leaseholds. The freehold of the Property is now vested in 20/20A Bedwin Street (Salisbury) Management Limited ("the Company"). The Company is a residents' management company and the members of the Company are intended to be the leaseholders of the 6 flats. The Company is responsible for the management and maintenance of the Property and is entitled to collect a service charge from the leaseholders to cover the costs so incurred.
2. On 3 February 2015, the Company applied to the Tribunal for a determination of the liability to pay and the reasonableness of the actual service charge for the calendar year 2014 and the estimated service charges for the years 2015 to 2020 inclusive. In respect of the 2014 service charge, the Company asked the Tribunal to determine the amount payable by each leaseholder and the date by which payment is to be rendered.
3. The application is supported by the leaseholders of Flats 1, 3, 4 and 5. It is opposed by the leaseholders of Flats 2 and 6. The lease of Flat 6 was originally granted to Richard Alan Molton on 12 December 2003. At some time the lease was transferred to his son, Mr. Lloyd Molton. On 28 March 2014, Lloyd Molton transferred Flat 6 to Imagine Property Rentals Limited ("Imagine") whose title to the Flat was registered on 9 May 2014.

4. The Company has not employed a managing agent to manage the Property since 1 June 2013. In place of a managing agent, Mr. William Dickinson, one of the leaseholders of Flat 4, has carried out the administrative work of managing the Property. He is the managing director of the Company and works under a contract of employment.
5. This is one of a number of applications which have been made to the Tribunal in relation to the Property since 2013. The service charges for 2012 and 2013 have been the subject of separate applications. There have been 2 separate applications relating to the costs incurred by the Company in relation to the 2013 service charge application. There have been applications relating to other matters and there is an outstanding application by Imagine for the appointment of a manager. As a result of these applications and surrounding circumstances a lack of trust has arisen between Mr. Dickinson on the one hand and Mr. Richard Molton, Mr. Lloyd Molton and Imagine (of which Mr. Richard Molton is an employee) on the other hand.
6. The Tribunal held a case management hearing on 24 March 2015 at which directions were given for the Company to prepare a statement of case and for the application to be referred to mediation. In the event that mediation was not successful, directions were given for the Respondents to prepare a statement of case. In the event, mediation was not successful and further directions were issued by the Tribunal at a further case management hearing held on 2 July 2015. The Company was given permission to file a reply to the Respondents' case and the application was to be listed for hearing.
7. Subsequent to the case management hearing, the Company informed the Tribunal that it did not intend to proceed with its application in relation to the estimated service charges for the years 2016 to 2020. At the beginning of the hearing on 6 October, the Company informed the Tribunal that it did not intend to proceed with its application in relation to the estimated service charge for 2015. The application proceeded just in relation to the actual service charge for 2014.
8. No party applied to the Tribunal for an order to be made under section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act").

The Law

9. The law relating to determination of the amount of service charges payable by a leaseholder is primarily set out in sections 18, 19, and 27A of the Act. In brief, if the parties to a lease cannot agree the amount of service charges payable, either the landlord or the tenant may apply to the Tribunal to make a determination. In making that determination, the Tribunal will consider whether the charge is recoverable under the terms of the lease and, if it is, whether the amount claimed has been reasonably incurred and whether the services or works were carried out to a reasonable standard. Where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.

10. The full text of the statutory provisions is set out in Appendix 2 to this decision.

The Lease

11. The Tribunal had before it a copy of a lease dated 12 December 2003 made between Marus Development Limited as lessor and Richard Alan Molton as lessee ("the Lease"). The Tribunal was informed that, and proceeded on the basis that, the leases of all 6 flats were in similar form.
12. By the Lease, the lessor demised Flat 6 to the lessee for a term of 125 years from 5 December 2003 at a yearly rent of a peppercorn.
13. Recital number 2 in the Lease provides:
it is intended that on the sale of the last flat in the Development, the freehold of the Development will be transferred to a Management Company.
14. Recital number 3 in the Lease provides:
The Lessor intends that the lease of the other flats will contain covenants similar to those contained in the Fourth Schedule hereto to the intent that any tenant for the time being of each flat may be able to enforce the observance of the said covenants by the owners and occupiers for the time being of the other flat.
15. The Company was registered as the proprietor of the freehold interest in the Property on 28 January 2004.
16. The terms of the Lease have been varied following an application to the First-tier Tribunal under Section 37 of the Landlord and Tenant Act 1987. A copy of the Tribunal's decision under reference CHI/00HY/LVL/2013/0001 dated 25 October 2013 making an order to vary the terms of the Lease (and the leases of the other flats at the Property) was before the Tribunal.
17. By Clause 2 of the Lease (as amended), Imagine covenants with the Company to observe and perform the covenants contained in the 5th Schedule to the Lease. By Clause 3 of the Lease, the Company covenants with Imagine to observe and perform the covenants in the 6th Schedule to the Lease.
18. Paragraph 12 of the 5th Schedule (as amended) provides for payment of the service charge in the following terms:

(12) To pay to the Lessor within 14 days of demand:

(a) 27.80% of the expenses and outgoings incurred by the Lessor in carrying out its obligations under the Sixth Schedule and any other expenditure incurred by the Lessor in the performance of its obligations under this Lease such payments (hereinafter called "the Service Charge") being subject to the following terms and provisions:

(i) for the avoidance of doubt it is agreed that the Lessor shall have the right to appoint a managing agent to carry out the Lessor's obligations under this Lease and that the fees of such agent shall be included in the Service Charge

(ii) the amount of the Service Charge shall be ascertained annually and certified by a certificate (hereinafter called "the Certificate") signed by the Lessor's auditors or accountants or managing agents (at the discretion of the Lessor) acting as experts and so soon after the end of the Lessor's financial year as may be practicable

(iii) the expression "the Lessor's financial year" shall mean such annual period as the Lessor may in its discretion from time to time determine as being that to the end of which the accounts of the Lessor shall be made up

(iv) a copy of the Certificate for each financial year may be inspected by the Lessee at the offices of the Lessor or its managing agents

(v) the Certificate shall:-

1. contain a summary of the expenses and outgoings incurred by the Lessor in respect of the Service Charge during the Lessor's financial year to which it relates together with a summary of the relevant details and figures forming the basis of the Service Charge

2. be conclusive evidence of the matters which it purports to certify and a copy certified by or on behalf of the person giving it shall also be so conclusive

(vi) the expression "the expenses and outgoings incurred by the Lessor" shall be deemed to include not only those expenses and outgoings and other expenditure which have been actually disbursed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure which are of a periodically recurring nature (whether regularly or irregularly) whenever disbursed incurred or made and may include such sums of money by way of reasonable provision for anticipated expenditure as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances

(vii) The Lessee shall if required by the Lessor pay to the Lessor such sums in advance and on account of the Service Charge as the Lessor or its accountants or managing agents (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment at such times and in such manner as the Lessor shall from time to time reasonably direct ...

(viii) as soon as practicable after the signature of the Certificate the Lessor shall render to the Lessee an account for the proportion of the Service Charge payable by the Lessee for the year in question due credit been given for all interim payments and/or payments made on account of Service Charge made by the Lessee in respect of that year and for any overpayment made by the Lessee in the previous year and for any period prior to the commencement of this Lease and upon rendering such account the Lessee shall pay the Service Charge or any balance found payable to the Lessor

(ix) The expression "the expenses and outgoings incurred by the Lessor" shall, for so long as the Lessor is a Residents Management Company also be deemed to include the following:

- 1. All professional fees (which shall include, without limitation to the foregoing, the fees, disbursements and other outgoings of persons or organisations providing professional advice to the Lessor which is to include but is not limited to: architects, business management, engineers, financial management, health and safety, leasehold management, legal, surveyors) incurred by the Lessor in the performance or contemplation of the performance of its obligations under this lease*
- 2. All costs incurred by the Lessor in operating the Residents Management Company.*

19. The 6th Schedule as amended sets out the covenants by the Lessor with the Lessee. They include:
- 1) At paragraph 5, a covenant to insure the Property;
 - 2) At paragraph 6, a covenant "to maintain repair and renew (which expression shall include the addition replacement or repair of any part that has been omitted or is inherently defective, the replacement of existing parts with modern materials which provide reasonable life-cycle cost reduction) as appropriate" the main structure and roofs of the Property, the external parts and retained parts of the Property and the services and communal facilities enjoyed by the Lessee in common with other lessees;
 - 3) At paragraph 7, a covenant to keep the communal facilities and retained parts lit and clean;
 - 4) At paragraph 8, a covenant to decorate the exterior of the Property at intervals of between 3 and 5 years;
 - 5) At paragraph 9, a covenant to provide and maintain illumination to the communal facilities and retained parts;
 - 6) At paragraph 10, a covenant to enforce the covenants by the lessees of other flats;
 - 7) At paragraph 14, a covenant to keep the floors of the retained parts covered with carpet.

The Inspection

20. The Tribunal inspected the common parts of the Property on 6 October 2015 in the presence of Miss Gourlay, counsel for the Applicants, Mr. Dickinson and Mr. Richard Molton.
21. The Property forms part of a row of buildings fronting onto Bedwin Street. The Property appears to be of recent construction. It consists of 4 storeys including a mansard roof. The front door of the Property leads from the pavement into a small entrance hall. A staircase leading from the hall gives access to the upper floors. Flats 1 and 2 are on the ground floor. Flats 3 and 4 are on the first floor. Maisonettes 5 and 6 are on the third and fourth floors. The hall and stairwell are compact. The surface of the walls are plastered and painted. The floors and stairs are carpeted up to 3rd floor level.
22. The Tribunal inspected the exterior of 6 windows fronting the street at ground floor level which had been painted in 2014. They are of wooden, sash construction. The Tribunal noted those internal parts of the sash windows which Mr. Dickinson said had not been painted previously.
23. The Tribunal was shown onto the balcony forming part of Flat 5 from which it was possible to see the 2 light wells above Flat 1 and the flashings around the balcony of Flat 6 which had had work carried out to them during 2014. The Tribunal was also able to note the extent of the small communal area at the rear of the Property.
24. The Tribunal noted the box constructed by Mr. Dickinson at the top of the stairs for storage of the Company's documents.

The Hearing

25. The hearing took place at the Law Courts, Wilton Road, Salisbury on 6 October 2015. The Company was represented by Amanda Gourlay of Counsel. Mr. Dickinson was present at the hearing. The other Applicants were not present. Imagine was represented by Mr. Richard Molton who is employed by Imagine. Miss Lindsay, a director of Imagine, was also present. Ms Osborne was present at the hearing. She was represented by a friend, Mr. Parsons.
26. The items of service charge which were challenged by the Respondents were conveniently set out on a schedule at page 11 of Imagine's statement of case.

The Evidence and submissions

27. The Company had filed a written statement of case with supporting documents which amounted to 940 pages. The reply which it filed took the Applicant's documentation to 1050 pages. Many of the documents which were filed were not relied upon. The documentation was excessive even taking account of the fact that it dealt with the estimated service charges for 2015 to 2020. References to page numbers are references to the relevant page in the Applicants' bundle.

28. Imagine filed a statement of case consisting of 37 pages. Ms Osborne filed a witness statement in which she adopted Imagine's case and made some points of her own.
29. Mr. Dickinson gave evidence on behalf of the Company. Mr. Molton made submissions on behalf of Imagine and Mr. Parsons made submissions on behalf of Ms Osborne.
30. The service charge account for 2014 appears at p.125. It shows total expenditure in the year of £13,034 and income from the lessees of £15,283 resulting in a surplus of £2,249 which is shown as transferred to the sinking fund. The account was prepared by the Company's accountant and appears to double up as company accounts for registering with Companies House. The account includes a certificate at p.132 signed by the accountant "*We certify that the total expenditure for the year £13,034 net of surcharges (£612) was £12,422.*" The account includes notes at pp.127 to 131 which provide greater detail in relation to some heads of expenditure.
31. At p.132, the account records that the service charge is divisible between the lessees in the following proportions:

Flat	Proportion	Certified expenditure
1	10.70%	£1,329.15
2	15.40%	£1,912.99
3	10.70%	£1,329.15
4	14.00%	£1,739.08
5	21.40%	£2,658.31
6	27.80%	£3,453.32
Total	100.00%	£12,422.00

32. At Appendix 1 to this decision is a table showing the amounts of expenditure as set out in the accounts, the amounts offered by the Respondents, the amounts allowed by the Tribunal and the apportionment of those amounts between the lessees.
33. Mr. Dickinson explained that the item of £612 surcharges referred to in the accountant's certificate arose from the fact that the Company allowed lessees to pay interim service charges by monthly instalments but raised a credit charge to those lessees who chose to make use of that option rather than pay in a lump sum. The credit charge was then treated as income which was set off against the expenditure incurred by the Company.
34. Mr. Dickinson explained the manner in which he kept the individual service charge accounts of the leaseholders. The 2014 budget is at p.66 and shows the anticipated expenditure and the manner in which it had been divided between the leaseholders. The demands for payment of an interim service charge on account of the 2014 service charge appear between pp.433 and 497. The individual leaseholder accounts are at

pp.421 to 43 and they show the amounts of interim service charge demanded from each leaseholder, the amounts paid by each leaseholder on account of the service charge and the balance outstanding at the end of each year. Those accounts show that each of the leaseholders had paid the interim service charge in accordance with the demands made by the Company resulting in no sums being due to the Company. As a result, no end of year service charge demands had been issued by the Company.

35. The Tribunal then dealt with each of the disputed items of service charge in turn.

Repairs and Maintenance – external decoration of windows:

36. Note 3 to the account shows the breakdown of the sum of £3,413 claimed for repairs and maintenance. Of that sum, £1,410 window painting, £392 sundry materials, £48 resin injection and £400 scaffold hire, making a total of £2,250 related to the painting of the exterior of the 6 ground floor windows facing Bedwin Street and cleaning of the exterior brickwork. Mr. Dickinson took the Tribunal to the invoices for the costs which are to be found at pp.172 to 181 and 193.
37. Mr. Dickinson gave evidence that the English Plumbing Company, a business run by Mr. Andrews, one of the leaseholders of Flat 5, was employed to carry out the work. Mr. Dickinson did the work himself as a direct labour only sub-contractor at an hourly rate of £15 per hour. His invoices show that he spent 44 hours fixing safety anchors, stripping, preparing and painting 3 windows at flat 1, 42 hours doing the same work to 3 windows at flat 2 and 8 hours cleaning the brickwork on the face of the Property by flats 1 and 2 and cleaning and disinfecting the patio areas and waste bin areas.
38. Mr. Dickinson produced invoices for materials which he had purchased amounting to £392. The scaffold which had been hired had previously been purchased by the Company and then bought by Mr. Dickinson at cost price on the basis that he would hire it back to the Company at commercial rates less £1.
39. Mr. Dickinson gave evidence that part of the sash had not been previously painted and had become penetrated with soot, oil and dust from the street. Cleaning with sugar soap had not been sufficient and resulted in the primer coat bubbling up when applied so that he had to use industrial grade ammonia. He had also had to obtain access to the interior of the flats in order to do a proper job. Those difficulties combined with poor weather meant that it took him 2 days for each window rather than 1.
40. Mr. Dickinson said that he had to use the base layer of the tower scaffold as a platform to comply with health and safety requirements bearing in mind that he was working on a public highway. He had taken advice from a safety coordinator. He said that the safety anchors had been fitted as a prelude to the need to fix scaffolding when painting the

windows above. The cost of £48 for resin injection related to the cost of resin for fixing the anchors.

41. Mr. Dickinson relied on a letter from Gerard Malloy FRICS to support his costs as reasonable.
42. Mr. Molton and Mr. Parsons said that the cost was excessive. Mr. Molton said that a reasonable cost for the work would be £450 to £550 and he relied on 2 estimates produced by Ms Osborne. One was a quotation from A Newell for painting 6 windows including preparation at a cost of £445 including materials. The other was a quotation from SR Services for £550 for labour and materials. Ms Osborne produced an exchange of emails between Mr. Dickinson and SR Services in which that company had responded to Mr. Dickinson's suggestion that their quote ignored the complexity of the work. They said that scaffolding would not be required as the work was at ground floor level and could be done from podium steps or a working platform (for which no separate charge would be made), that the work would be done competently and that the time taken by Mr. Dickinson was excessive.

Repairs and Maintenance – Water ingress and roof inspection:

43. The accounts show £525 claimed for rain water ingress and £105 for roof inspection. The invoices for this work are at pp.154 to 156. They show that the work was carried out by Mr. Dickinson as a sub-contractor of EPC. Mr. Dickinson charged for 18 hours doing emergency repairs, taking apart, re-assembling and resealing the light wells to Flat 1. He charged for 17 hours for sealing flashings adjacent to Flat 6 which involved cutting access holes in the bathroom ceiling of Flat 6 and making good. He charged for 7 hours for inspecting the lead on a flat roof.
44. Mr. Dickinson said that the work on flats 1 and 6 were necessary to stop leaks following rain water ingress during heavy rains in February 2014. The lead on the flat roof had been repaired in earlier works and a surveyor had recommended an annual inspection to ensure that the sealing around the edges of the lead had not broken and that the lead sheets were not lifting. He had carried out a finger tip inspection having removed solar panels from the roof. He had not charged for removing the panels as they belonged to him.
45. Mr. Molton said that he had been unable to obtain any quotations retrospectively but he considered that the total charge was excessive. He thought that £100 to £200 would be sufficient for dealing with the leaks and that the inspection costs were minimal.

Post and Stationery

46. The account claims £563 for this item. A schedule breaking down the cost is at pp.223 to 225 and copy invoices are attached.
47. Miss Gourlay submitted that the costs were recoverable as part of the costs of management. She said that paragraph 12(a)(i) of the 5th

schedule allows for the cost of a managing agent. In effect, Mr. Dickinson is fulfilling the role of managing agent. A copy of his contract setting out his management duties is at page 669 of the bundle.

48. Mr. Dickinson said that he had produced invoices for all of the costs. He said that the majority of the leaseholders had voted for a particular method of management whereby everything was done by postal ballots rather than meetings. He prefers to send documents by post rather than by email as email is open to abuse. Included under this heading was the cost of office stationery such as printer inks, envelopes, files and storage tubs.
49. Mr. Molton considered that the costs were excessive. He submitted that the Company could save money by using email. He suggested that £200 was sufficient.

Office Services

50. The account claims £2,034 for this item. A breakdown is at p. 272. The amount is made up of £1,800 paid to Mr. Dickinson as provided for in his contract of employment as managing director, £180 paid to Mrs. Dickinson in her role as company secretary and £54 travel expenses.
51. Mr. Dickinson said that his fees were justified because he was doing the job of a managing agent. The work which he has to do is specified in his contract. This includes S20 consultations and project managing works whereas the fees quoted by other agents did not. His wife's duties include opening the incoming post, scanning it and checking outgoing post.
52. Mr. Molton accepted that it was reasonable to allow something for managing the Property. The company was proposing to appoint Mr. Greaney of Initiative Property Management to manage the Property and he had quoted £200 per flat and £75 per hour for any additional work. Imagine had obtained a quote from Salisbury Block Management of £150 or £250 per flat (he could not remember which). He suggested that £1,200 should be allowed for this item. He did not consider that a company secretary was warranted for such a small company.

Legal and Professional fees

53. The account claims £2,405 for this item. Note 6 provides a breakdown and the invoices are at pp.281–285. £480 was charged for registering at HM Land Registry the variations to the leases ordered by the Tribunal in 2013. A further £440 was paid to register restrictions at HM Land Registry. £1,485.40 was paid for advice concerning changes to the Company's Articles of Association.
54. Miss Gourlay submitted that these costs were recoverable under the terms of paragraph 12(a)(ix)(2) of the 5th Schedule as costs of running the residents management company. She submitted that the costs did not need to be incurred in fulfilling an obligation under schedule 6 of the Lease.

55. Mr. Dickinson said that it was necessary to register the variations to the leases with HM Land Registry. HM Land Registry had made an error by not registering restrictions on the first application which necessitated a second application. That had resulted in objections from Imagine and Ms Osborne. The new Articles of Association were required because the old ones did not comply with the new Companies Act. He said that there had been a full consultation with the leaseholders.
56. Mr. Molton submitted that Mr. Dickinson or a managing agent could have dealt with registering the variations without instructing a solicitor. He did not consider that it was necessary for the Articles to be amended and Imagine had not been consulted about the changes.
57. Mr. Parsons submitted that there was no need for a solicitor to be instructed to deal with the registrations. He said that Ms Osborne had not objected to the registration of a restriction. Mr. Parsons said that he had had discussions with Mr. Dickinson about changes to the Articles but he thought that the work was being managed by a solicitor and he thought that Mr. Dickinson had wasted many hours of time on the project and had consequently increased the cost by interfering.

LVT Costs

58. The account claims £370 for this item. Although initially disputed, both Mr. Molton and Mr. Parsons indicated that this item was no longer disputed.

Net Company Costs

59. The account claims £740 for this item. A breakdown appears at note 8. £272 is claimed for directors' insurance. £124 is claimed for company and land registry searches. £13 relates to the cost of the Company's annual return, £319 is the cost of storage for the Company's archives. £12 is for bank administration charges.
60. Mr. Dickinson said that directors' insurance was justified as protection for those leaseholders who agreed to become directors as directors could only be drawn from amongst the leaseholders. It was recoverable under paragraph 12(a)(ix)(2) of the 5th schedule to the Lease. The searches related to obtaining office copy entries to update his records, searches in connection with tribunal applications and updating details of mortgagees. The costs for storage related to the cost of wood and materials for constructing the box at the top of the communal stairs at the Property for storing the Company's records.
61. Mr. Molton did not consider that directors' insurance was necessary. The Company owns the freehold of the building, it is only responsible for maintenance and repair of the common parts and if work is delegated to responsible contractors, they would have their own PI insurance. Therefore there was no risk to be covered. He did not consider that the searches were necessary and thought that this was spending money for money's sake. Expenditure on storage was unnecessary as Imagine

could provide storage facilities in Milton Keynes free of charge. He accepted the £13 annual return fee.

Audit and Accountancy fees

62. The account claims £240 audit fees and £780 accountancy fees. Mr. Molton and Mr. Parsons accepted the accountancy fees but disputed the need for audit fees in addition.
63. Mr. Dickinson said that the accountants had been instructed to prepare a statement of fact audit only. Ms Osborne had objected to those accounts and had asked for a full audit as she was entitled to do as a member of the Company. A postal ballot had approved the instruction to carry out a full audit. He accepted that under the terms of the Lease, the Company is only obliged to provide a certificate for the service charge. He said that this was a cost of running the Company.
64. Mr. Molton said that there was no need for an audit for a small company.

Section 20C and Costs

65. No party applied for an order to be made under Section 20C of the Act. There were no applications for costs.

Conclusions

66. The Tribunal draws the attention of the parties to the comments of a differently constituted tribunal involving the same parties at paragraph 11 of the decision in case number CHI/00HY/LSC/2013/0003. That application related to the 2012 service charge. The Tribunal agrees with what is said at that paragraph. When considering what costs are recoverable as part of the service charge under the terms of a lease, the Tribunal is only concerned with the terms of the lease and what is allowed under that lease. It may be that the landlord, even when it is a residents' management company, incurs costs perfectly legitimately but it is not allowed to recover those costs from the leaseholders as part of the service charge. Those costs may be recoverable from the members of the company in their capacity as members rather than leaseholders but the Tribunal has no jurisdiction to determine such issues. The Tribunal is purely concerned with the issue of what is properly recoverable as part of the service charge under the leases.

Repairs and Maintenance – External decoration of windows

67. The Tribunal is struck by the fact that Mr. Dickinson did not see fit to obtain any competitive quotes for decorating the windows before arranging to carry out the work himself. The Tribunal is satisfied that the amount of time spent by Mr. Dickinson in decorating the windows was excessive. Mr. Dickinson did not suggest that the unpainted parts of the sashes were hidden or could not have been seen by a decorator so as not to be taken into account in a quotation. There was no evidence that the windows were in a condition which would have made this work difficult for a competent contractor to carry out in a normal routine manner. The Tribunal was not satisfied that there was any requirement to hire scaffolding. The height of the windows at ground floor level was

such that the work could have been carried out using normal platforms for which no charge would have been made by a contractor. There was no requirement for wall anchors to be installed to carry out this work. Whether or not they might be required when painting the upper windows is a question to be considered when that work is done. There is no evidence that there was a need to clean the brickwork or that the time taken to do it was reasonable. The Tribunal considers that the quotation obtained from SR Services is reasonable and will allow £550 to cover the whole of the cost claimed for this item.

Repairs and Maintenance – Water ingress and roof inspection

68. Again, the Tribunal is struck by the fact that Mr. Dickinson did not obtain any competitive quotes for dealing with the water ingress. Having seen and heard from Mr. Dickinson, the Tribunal is not satisfied that he is suitably qualified to deal with such work. 35 hours to do this work is excessive. The Tribunal considers that a properly qualified contractor would take no more than 1 day, possibly 2, to resolve the problems which were present. The Tribunal considers that £100 is on the low side for this item and considers that £300 would be a reasonable sum for the work to be carried out by a properly qualified contractor.
69. There was no evidence that Mr. Dickinson is qualified to carry out a roof inspection such as he described. The amount of time which he spent on the inspection was excessive. The Tribunal is not satisfied that there was a need for such an annual inspection. Even if there was, this was something that a managing agent would undertake as part of his normal routine of inspections. The Tribunal disallows this item in full.
70. The net effect of these decisions is to reduce the amount allowed for repairs and maintenance from £3,413 to £1,383.

Post and Stationery and Office Services

71. The Tribunal will deal with these items together. The Tribunal accepts that the Company is entitled to recover through the service charge the cost of employing a managing agent. The Tribunal accepts that Mr. Dickinson is carrying out the equivalent role of a managing agent. His duties are set out in his contract of employment. However, that does not mean that he can automatically charge all his costs. His charges must be reasonable. What is reasonable can be assessed by considering what a managing agent would charge to carry out the work. Mr. Molton provided evidence that Initiative Property Management were proposing to charge £200 per flat for managing the Property and that Salisbury Block Management would charge £250 per flat. The Tribunal notes that Mr. Dickinson includes project management and S20 consultations within his fee whereas the managing agents would charge extra for those items. The Tribunal has seen the Property. It should not be a substantial management task. There was a one-off requirement to carry out substantial roof works in 2013 and there is a need to have a future management plan. However, that is not unusual. The Tribunal considers that a total fee of £1,800 is a reasonable fee for managing the Property to include the additional work done by Mr. Dickinson.

However, a managing agent would not charge an additional sum for postage, stationery, storage of documents or walking to the post office. A managing agent would also include company secretarial services and travelling expenses in its fee. Consequently, the Tribunal disallows all of the costs under Postage and Stationery and allows only £1,800 for Office Services.

Legal and Professional fees

72. The Tribunal does not accept the submission made by Miss Gourlay that paragraph 12(a)(ix) of the 5th schedule stands in its own right. The Tribunal repeats what it said at paragraph 60 of its decision in relation to application number CHI/00HY/LSC/2015/0011. Paragraph 12(a)(ix) is subservient to paragraph 12 and defines what is meant by "*the expenses and outgoings incurred by the Lessor.*" For those expenses to be recoverable as part of the service charge, it is still necessary for them to be incurred "*in carrying out its obligations under the 6th schedule*" or "*in the performance of its obligations under this lease*".
73. There is no obligation in the Lease requiring the Company to amend its Articles of Association. There is no obligation in the Lease requiring the Company to vary the terms of the leases or to make any subsequent registrations at HM Land Registry.
74. It may be that there were perfectly good reasons why the Company decided to apply to vary the leases and to amend the Articles of Association. The associated costs may be proper costs of the Company which are recoverable from the members of the Company but they are not costs which properly form part of the service charge and they are not recoverable as such. These costs are disallowed in full.

Net Company Costs

75. Whether or not it is reasonable for the directors to take out insurance to cover their potential personal liability, the Tribunal does not consider that the cost of such insurance is recoverable as part of the service charge. If it is argued that it is part of the cost of managing the Property, then it is already taken into account in the figure of £1,800 allowed for managing the Property. If it were to be allowed in addition to that sum, then the overall cost would be unreasonable and it would be more economical for the Company to delegate the task of management to a managing agent which would have its own insurance. If, on the other hand, it is argued that it is part of the cost of running the residents management company, then the same arguments apply as set out at paragraph 72 above. There is no obligation in the lease requiring the Company to take out such insurance and the cost is not recoverable.
76. Likewise with the cost of storage. If a managing agent were employed, the cost of storage would be included in the managing agent's fee. There is no separate obligation in the Lease requiring the Company to provide such storage. The cost is not recoverable.

77. Likewise with the cost of searches. These are part of the costs of running the Company but the Lease does not oblige the Company to carry out such searches. The cost is disallowed. The same arguments apply to the bank charges for which there was no explanation from Mr. Dickinson.
78. The total allowed under this heading is £13 for the annual filing fee which was accepted by Mr. Molton.

Accountancy and Audit fees

79. The Tribunal allows the accountancy fees which were accepted by Mr. Molton but disallows the audit fee. The Lease requires a service charge account to be prepared and for a certificate to be signed by the auditor, accountant or managing agent certifying the amount of expenditure. That is what has been done in the account. There is no requirement for an audit. If a member of the Company has required an audit to be carried out, that is a matter for the members to resolve but it is not a cost which can be added to the service charge.

Summary

80. In summary, the total expenditure allowed by the Tribunal for the 2014 service charge year is £6,223.00 as set out at Appendix 1. The shares which are payable by the leaseholders are also set out at Appendix 1. Those shares became payable when the Company rendered an account of the leaseholders' service charge in accordance with paragraph 12(a)(viii) of the 5th schedule. However, as all leaseholders had already paid sums on account of service charges in excess of those amounts, no further sums were or are payable. Any surplus paid by the leaseholders should be credited against their service charge account for 2015 in accordance with paragraph 12(a)(viii). There is no provision in the lease for those surpluses to be transferred to a sinking fund. If the Company wishes to establish a sinking fund, it must include an appropriate amount in the service charge budget as provided for in paragraph 12(a)(vi) and that amount must be carried forward into the service charge account so that the leaseholders have a clear indication of the amounts which are to be transferred to a sinking fund and the reasons for establishing the sinking fund.
81. It is clear to the Tribunal that whilst Mr. Dickinson may have been doing his best in difficult circumstances to manage the Property for the benefit of the members and leaseholders, he did not properly take into account the terms of the Lease. It is striking that of the original expenditure certified by the accountant, only about 46% related to the actual costs of insurance, electricity, repairs and cleaning. The remainder related to the costs of accountancy and running the Company. Mr. Dickinson appears to have allowed that aspect to run out of control and that attitude is reflected in the size of the bundle which he prepared for the Tribunal which was unnecessarily large. The Tribunal appreciates that most of the costs disallowed by the Tribunal have been incurred by the Company and will have to be met by the members of the Company if the Company is to remain solvent. How that is to be done is for the Company to resolve and not for the Tribunal.

Right of Appeal

82. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
83. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
84. The parties are directed to Regulation 52 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169*. Any application to the Upper Tribunal must be made in accordance with the *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme
Judge of the First-tier Tribunal
Dated 21 October 2015

Appendix 1

Item of expenditure	Claimed in accounts	Agreed by Respondents	Allowed by Tribunal
Electricity	302	302	302
Insurance	1,405	1,405	1,405
Repairs and Maintenance	3,413	869	1,383
Remedial Works	-50	-50	-50
Cleaning	300	300	300
Window cleaning	532	532	532
Post and Stationery	563	200	0
Office services and fees	2,034	0	1,800
Legal and Professional fees	2,405	50	0
LVT costs	370	370	370
Net Company costs	740	13	13
Audit fees	240	0	0
Accountancy fees	780	780	780
Sub-total	13,034	4,771	6,835
Less surcharges	-612	-612	-612
Total expenditure	12,422	4,159	6,223

Division between leaseholders.

Flat	% liable	Certified expenditure
1	10.70	£665.86
2	15.40	£958.34
3	10.70	£665.86
4	14.00	£871.22
5	21.40	£1,331.72
6	27.80	£1,730.00
	100.00	£6,223.00

Appendix 2.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

- 1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- 2) ...
- 3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.