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

**Case Reference** : LON/OOAC/LSC/2013/0650

**Property** : Flat 3, 41-47 Station Road, London NW4 4PN

**Applicant** : 41-47 Station Road RTM Company Limited

**Representative** : Mr S Tucker, Legal Support Administrator for  
BLR Property Management, Managing Agents  
for the Applicant  
Mr E Chinembiri, the Property Manager

**Respondent** : Miss M Benmax

**Representative** : Herself and Mr Alan Harris (a friend)

**Type of Application** : Sections 27A and 20C of the Landlord and  
Tenant Act 1985

**Tribunal Members** : Tribunal Judge Dutton  
Ms S Coughlin  
Ms S Wilby

**Date and venue of  
Hearing** : 16<sup>th</sup> and 17<sup>th</sup> February 2014 at 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 10<sup>th</sup> March 2014

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**DECISION**

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## DECISION

**The Tribunal makes the determinations as set out below and as shown on the attached schedule by reference to each service charge year in dispute.**

**The Tribunal declines to make an order under Section 20C of the Act but orders that the Applicants may not recover more than 75% of their costs for the reasons set out below.**

### BACKGROUND

1. This matter came before us for hearing on 16<sup>th</sup> and 17<sup>th</sup> February 2014 as a result of an application made by the Applicants through their managing agents BLR Property Management Limited (BLR) dated 20<sup>th</sup> July 2013. The application sought a determination in respect of the service charge years 25<sup>th</sup> March 2010 through to 24<sup>th</sup> March 2013 and the estimated service charge for the 25<sup>th</sup> March 2013 to 24<sup>th</sup> March 2014. The various items of expenditure are shown as set out on the attached Scott schedule and we have marked thereon the amount which we have determined is in fact payable.
2. Prior to the Hearing we were presented with a bundle of documents which comprised some 870 pages and in addition during the course of the Hearing the Applicants provided us with the actual accounts for the year ended 24<sup>th</sup> March 2010 with supporting invoices. In addition, we were provided with a copy of the statement of Miss Benmax's account with the Applicant dated 17<sup>th</sup> February 2014, which we will return to in due course, as well as copies of the demands and the statutory wording provided, a statement in respect of the major works showing the sums expended and correspondence passing between Conway and Co, Solicitors for BLR and others relating to an award by an LVT in February 2010 (see para 5 below).
3. A Scott Schedule had been prepared by the Applicants but unfortunately the Respondent had not completed the column for her comments. She indicated that the Scott Schedule had never been delivered to her, which is inconsistent with an email included in the bundle dated 1<sup>st</sup> November 2013 sent by Mr Tucker to Miss Benmax in which the Scott Schedule is attached and references made to the hand delivery of a number of envelopes. These envelopes, it seems, contained the Applicant's documentation which appeared in the bundle. Miss Benmax says that she did not receive this email, although she accepted she did receive the hand delivery of the envelopes. However, she did not see fit to contact BLR to ascertain the Scott Schedule's whereabouts. Accordingly, in the bundle of documents that she provided, we found, dotted amongst them and in no particular order, comments she was making in respect of various service charge issues. An example of this was to be found at page 514 of the bundle, which refers to the service charge year 25<sup>th</sup> March 2010 to 24<sup>th</sup> March 2011 and appears to challenge bank charges, postage, electric charge, fire risk assessment and cleaning and gardening. The comments she makes under the heading 'Leaseholder' are as follows:-

### *WHY BANK CHARGES*

*There should be a separate statutory interest bearing(sic) trust account for leaseholders 41-47 Station Road RTM Company Limited and for reserve/sinking funds provide bank account information from commencement.*

*THE ELECTRIC*

*Not adjusted according to my lease.*

*POSTAGE*

*Lack of response to my numerous registered letters.*

*CLEANING AND GARDENING*

*Cleaning not adjusted according to my lease.*

4. These comments were somewhat repetitive in respect of the service charge years that we were required to consider but it did make it difficult to ascertain exactly what complaints Miss Benmax was raising.
5. We should also record there have been previous decisions involving these parties and the one to which we were referred on more than one occasion was that under case number LON/OOAC/LAM/2009/0013 which followed a hearing on 28<sup>th</sup> January 2010 and a decision issued on 17<sup>th</sup> February 2010. Miss Benmax says the decision was inconclusive. She complained she had not been able to express her case and that her statement and evidence had been “blocked off.” We endeavoured to make it clear to Miss Benmax that we could not, and would not, interfere with the decision that had been made by our colleagues in 2010. She had had ample time to appeal that decision and indeed we believe she had tried to do so, but the decision stood. The only area we felt we were able to assist was to consider the actual service charges for the year 2009/10 because our colleagues had, in this decision only the estimate of costs. At paragraph 53 of that decision the following comment is made: - *“For the avoidance of doubt it should be noted that – as regards 2009/10 – this decision relates to the on account charges which are based on an estimate of the actual cost. Therefore, when the actual cost of the service is known, the Respondent will need make a balancing adjustment to the amount payable by the Applicant to reflect the actual costs, but in making that balancing adjustment the Respondent will not be able to charge under each head of the service charge more than is recoverable under Section 19(1) of the 1985 Act.”* In this case the Applicant was Miss Benmax and in the decision it is clearly recorded the service charges which are in dispute. For the year 2009/10 the items that were challenged by her were management fees; repair and maintenance charges; charges for gardening; charges for cleaning; charges for window cleaning and insurance premiums.
6. As we have indicated, during the course of the Hearing Mr Tucker was able to provide us with the actual accounts for the year ending March 2010 and supporting invoices and we will refer to this year in the findings section of this decision.
7. We, therefore, concentrate on the service charge years ending March 2011, March 2012, March 2013 and the estimated costs ending March 2014.
8. We had copies of the service charge accounts for each of the years in question, copies of some reports, the Section 20 consultation papers, the management agreements and the Applicant’s statement of case.

9. In addition to these documents there was the Respondent's statement of case at page 393, which was largely historic. The Respondent's documentation also included various invoices and as we have mentioned above, her comments dotted amongst those. The Scott Schedule containing the Applicant's comments with exhibits and a copy of the Respondent's lease were also included.

## HEARING

10. The Hearing commenced on 16<sup>th</sup> February 2014 starting at around 10.00am and continued through much of 17<sup>th</sup> February 2014. At the start of the Hearing Miss Benmax was asked to confirm exactly what her case was. In a somewhat discursive introduction she told us that she had been a leaseholder since 1993 and that she had in fact introduced BLR as the managers from September of 2007. She was concerned at the running of the Applicant's RTM company. Apparently it was, as Mr Tucker put it, a dormant company and was not required to file accounts as it did not trade. There were eight leaseholders who were members and two who were directors, Mr Singh of Flat 15 and Mr Valence of Flat 14. There was reference to earlier years which we endeavoured to limit but upon production of a statement of account dated 17<sup>th</sup> February 2014, Miss Benmax sought to challenge payments made in 2007 which she said had been wrongly claimed. What was clear, however, from the statement of account was that one payment had been made on 5<sup>th</sup> November 2007 in the sum of £655.32 and a further payment made in September 2010 following the February 2010 decision in the sum of £2,303.88. This further sum had only been obtained as a result of the Applicants seeking enforcement of this Tribunal's award, stalled by Miss Benmax's application to the County Court for the award to be set aside (which application was dismissed with costs) and finally issued upon payment of a warrant of execution. It was well-nigh impossible to satisfy Miss Benmax that the payment shown on the accounts appeared to accurately reflect monies that had been received. There is no doubt that the statement of account is confusing as it shows a number of contra-entries and it may well be that the Applicants would benefit from some time with Miss Benmax seeking to explain how the sums have been dealt with. The upshot, however, is that at the time the matter came before us Miss Benmax owed the Applicant company £6,982.94 in respect of the service charge years in dispute.
11. We then proceeded to consider each of the service charge years. Miss Benmax was asked whether there were any items of expenditure which she did not seek to challenge. She told us that she did wish to challenge each and every item. It is not, we think, necessary for us to go through each and every item on the three service charge years where actual costs have been incurred and in respect of the estimated charges. What we should however record is some of the evidence which was relevant to our decision.
12. We were told by Mr Tucker that there is a form of sinking fund although it was accepted by him that the lease appeared to make no specific provision for this. What appears to happen is that the service charge costs are estimated and demanded from the leaseholders on a six monthly basis. For the years that we have considered the estimated charge has exceeded the actual charge. The sum in excess instead of being credited to the leaseholders is transferred to a sinking fund. For example, in the year 2011 the balance transferred to the sinking fund was

£1,896.84. In the year 2012 it was £3,257.52 and in the year ending March 2013 it appeared to be £1,966.59 although there also appeared to have been a drawing on the sinking fund of £3,313. For the estimated service charge year which is that ending March 2014, no specific contribution towards the service charge fund is shown. We were told by Mr Tucker that this arrangement was with the approval of the directors of the applicant company and that the monies were held in Barclays Bank in a trust fund. We were also told that BLR was involved in the administering of the accounts and they were authorised to hold these funds. Furthermore, a company which appeared to be controlled by directors of BLR was also the Applicant's secretary.

13. It is right to note that there is what appears to be a close relationship between a number of companies that are involved in the management of 41-47 Station Road. BLR, the managing agents, trade from Hyde House, The Hyde, Edgware Road, London NW9 6LA. In addition, trading from that address, and we understand in fact on the same floor level, are HR Surveyors, C2 Maintenance and Mckenzie Field, who are the accountants/auditors and who prepare the accounts for the Applicants. We were told by Mr Tucker that the first two companies were sister companies to BLR, but that the accountants were an independent company. We should say that there is no evidence before us that there was any abuse of this position. However, this close tie-in has certainly caused Miss Benmax some concerns and is a matter which we comment upon in the findings section of this decision. Miss Benmax was certainly concerned at the lack of transparency and the difficulties she had in contacting the directors of the applicant company.
14. In respect of various matters in dispute, Miss Benmax told us that in relation to the accountancy charges she did not think they were audited in accordance with the terms of her lease and that accordingly they were not payable. Insofar as the bank charges were concerned, she did not see why the RTM company should be paying those and no letter was produced to show how Barclays' charges were in fact levied. We were told by Mr Tucker and it is recorded on the Scott Schedule, that the bank charges appeared to include also some additional costs of the managing agents.
15. In respect of the cleaning and gardening charges, she says that the lease requires those charges to be apportioned directly to her stairway. Mr Chinembiri told us that there were three entrances with 15 flats in total. It became clear that if the matter were apportioned as suggested by Miss Benmax, that could in fact result in her paying more than she does where the cost is presently divided on a straight one 15th basis. We were told that there was only one electricity meter covering the common parts and in any event Miss Benmax conceded that the electricity charge was not in issue, nor indeed was the quantum of the cleaning and gardening costs.
16. There was concern raised at the number of fire risk assessments that had been carried out. In respect of the insurance, she had no particular quibble at the level of premium but was concerned she had not herself been able to make use of the insurance policy when her flat had suffered internal damage. In fact it appeared on questioning that she had made a claim but that it had not been settled in full because her flat still appeared to suffer from some form of water ingress. We heard all that was said in relation to the legal fees' claim, which appeared to be £939.50 and £300 in the year 2010/11. This we were told related to the enforcement in the County Court of the order made by the Tribunal in February of 2010. Much time

was taken up by Miss Benmax revisiting this issue and raising certain concerns with regard to the actions taken by the County Court, which of course is not within our jurisdiction.

17. At the luncheon adjournment, Miss Benmax told us that she did not think there should be any management fees to pay because she said that there had been damage caused to her and to her flat and that there was in fact no management. She again returned to the question of the statement of account seeking to raise issues relating to matters of history which were not relevant in this case and in any event did not appear to be correct from the statement of account that we were provided with.
18. The question of the company secretarial fee was raised but Mr Tucker accepted that that should not be a service charge item and should be removed and accepted also that the directors' and officers' insurance should not appear as a service charge item and could therefore be deducted for each year in which it was recorded.
19. At the adjournment of the Hearing on 16<sup>th</sup> February, we asked Miss Benmax to consider the various maintenance invoices from C2 Maintenance Limited, who appear to carry out the bulk of the day to day repair works at the property. She did not appear to undertake this task and it was, therefore, very difficult for us to consider what invoices, if any, should be challenged. There were certain invoices which appeared to have been duplicated or which related to charges that should have been levied to the individual leaseholder and not as a service charge. We will refer to those in the findings section. However, Miss Benmax provided no compelling comparable evidence to challenge any of these costs.
20. One item of expenditure that needed clarification was a surveyor's fees for an asbestos report. This report was not available in the papers before us, although Miss Benmax commented that she had seen it. It was subsequently produced and we believe a copy sent to Miss Benmax. We do not propose to make any specific findings as such in relation to the report confining our views instead to the level of the fee. It is right to record, however, that the survey does include a register of asbestos elements and does not appear to have been a survey which has been repeated. The question of a policy excess charge in the year ending March 2012 was raised and it was Miss Benmax's view that this should be borne by the individual leaseholder. Mr Tucker said that it was a leak from an external source and was, therefore, the landlord's responsibility and should be recoverable as a service charge.
21. We then turned to the consideration of the major building works for which the Section 20 documentation was included in the bundle. It appears that this was in respect of external and internal decorations but at the request of the Applicants has been split into three tranches. Apparently the external decorations have now been completed and billed and the internal decorations may take place sometime this year. We were provided with a certificate confirming the final payment (subject to a small retention) which had been approved by a Mr Banyard, who is a chartered surveyor and an employee of HR Surveyors. Miss Benmax at this stage attempted to introduce photographs that had been taken by her in 2013 which did appear to show one area of cracking adjacent to the rear common parts doorway. This was explained by Mr Chinembiri as being a problem with the door sticking which had to be slammed and this had itself caused some problems with the render. It was, he

said, to be resolved and it may be resolved by replacing the rear door completely which will prevent this problem arising. Miss Benmax's concerns appeared, however, to be limited to the cracking which she said appeared in the rear flank wall of the property. She made no other complaint other than saying the work was poor, without being specific.

22. In the year 2013 there appeared to be a substantial increase in the accountancy charge which Mr Tucker accepted was wrong and sought to reduce the accountancy fee to £310.35 with a further £180 payable in respect of the lodgement of the Applicant's accounts with Companies Registry. Comments were then made in respect of certain C2 Maintenance invoices and further discussions relating to the sinking fund and the completion of the external decorations to the front elevation. We then listened to a lengthy and unhelpful discourse by Miss Benmax concerning the accounts and a statement from her essentially saying she had been overcharged.
23. Mr Tucker told us that he was going to seek to recover the costs of these proceedings as a service charge and that he had had meetings attempting to resolve the issues but had been instructed by the Applicants to proceed. Miss Benmax told us she believed she had legitimate complaints about the items which were included in the accounts and the wrongful inclusion of a sinking fund and some costs which were chargeable to individual leaseholders.

#### **THE LAW**

24. The law applicable to this matter is set out in the attached schedule.

#### **FINDINGS**

25. We should say at the outset that we found it difficult to marshal Miss Benmax's arguments into a form of sensible challenge to the accounts produced for the years in dispute. She did not appear to challenge the correctness of the accounts. We had given her the opportunity between Monday and Tuesday to have considered the various invoices from C2 Maintenance but she had not done so. Whilst it was clear from a review of those invoices there may be areas where there was some anomaly or question to be answered, Miss Benmax had not raised, save in very few circumstances, any specific complaints and we were reluctant to become her advocates in seeking to press forward this matter. Accordingly we have had to do the best we can on the evidence that was available to us without becoming directly involved as Miss Benmax's advisers.
26. We should also record a couple of matters relating to the RTM company and BLR Property Management. The RTM company appears to be run by two directors and has the involvement of one of BLR's sister companies as the Company Secretary. We, on more than one occasion, told Miss Benmax that if she had concerns with regard to the running of the RTM company she should obtain some good advice from a solicitor experienced in company matters who would advise as to what steps she could take to call meetings and, if necessary, have herself put forward as a potential director. It is unclear whether or not she heeded our views in that regard.
27. We do express as a matter of concern, but no more, the very close inter-relationship between the four companies who we mentioned earlier in this decision and who all

appear to trade from the same floor of Hyde House. Whilst there was no evidence before us that there had been any abuse of this position, it does seem to us that there is an added burden imposed upon BLR Property Management to be wholly transparent in all their dealings. In truth there was nothing before us which indicated they had not been. Miss Benmax made on a number of occasions wholly unsupported assertions concerning the involvement of certain members of BLR Property Manager in the other companies, but we have not taken those assertions into account in reaching our decision.

28. We were asked to inspect the subject premises. Whether an inspection takes place is a matter for the Tribunal to consider. We were tempted. However, when considering the statement of account in relation to the major works, we noted that only £495 had been spent on attendance to cracks. It may well be that further work is needed in that regard but it did not seem to us proportionate for the three members of this Tribunal to travel to North London for the purposes of inspecting exterior decorating works which is now at least two years old where the major concern is cracking for which a cost of £495 in a total charge exclusive of professional fees of £12,790 is therefore but a small proportion.
29. Miss Benmax also raised a couple of issues concerning the term of the lease. These related to the necessity, in her view, of having the accounts audited and the apportionment of certain costs. The clause relating to the accounting provisions is to be found at clause 4(2)(iii) which says as follows: *“Within 14 days of receipt of a copy of a certificate by the lessor’s auditors of the total expenditure on service obligations incurred by the lessors for the previous accounting year, to pay to the lessors the lessee’s contribution less any amount or amounts which the lessee may have already paid in advance.”* We do not consider the use of the phrase *“lessor’s auditors”* means that the accounts have to be audited. What is required is a certificate and that certificate has been prepared by a firm of auditors and accountants. Each of the accounts contains an accountant’s report, confirming they have complied with the Landlord and Tenant Act 1985 and in those circumstances we are satisfied that the provision of the accounts has been correctly dealt with and save for the year ending March 2013, we find that the accounting charges are properly payable. We say that, however, on the basis that what is not recoverable in our view from the Respondent are the accountancy charges relating to the lodgement of the RTM accounts. In the year ending March 2011 a fee of £58.75 was charged inclusive of VAT, in the year ending March 2012 that charged appeared to have risen slightly £62 inclusive of VAT and in the year ending March 2013 had risen substantially to £180 plus VAT. We do not consider that those items of expenditure should be met by the leaseholders as a service charge but are an expense that the company is entitled to recover from its members, and one of those is of course Miss Benmax. Insofar as the accounting charges for 2013 are concerned, there appeared to be some concern as to the costs which had been charged. There was an invoice for £295.57 dated 29<sup>th</sup> May 2012, an invoice of the same day for £62 which appeared to relate to the RTM accounts and a further invoice for £180 which also appeared to relate to the RTM accounts which was dated 18<sup>th</sup> September 2012. No satisfactory response was given and it seems to us, therefore, that it would be appropriate to only allow the charge of £295.57 in this year.



30. Insofar as the fire risk assessments were concerned, we are satisfied that the charge made by 4Site following a site visit in October of 2010 is reasonable and is recoverable.
31. Insofar as the gardening and cleaning is concerned, there was no real complaint about the standard or the cost. As initially with the electricity, Miss Benmax's concern was that the lease was not being complied with and we turn now to the fourth schedule of the lease which is as follows:-

*"THE FOURTH SCHEDULE above referred to*

*Cost expenses outgoings and matters towards which the lessee must contribute one 15th share*

1. *The expense of enforcing the lessor's rights and carrying out all the lessor's obligations under this lease but so that no contribution shall be required of the lessee in respect of the cleansing, lighting, redecoration and repair of the staircases used exclusively by the other lessees.*

In the plans attached to a copy of Miss Benmax's lease the staircases serving the development, of which there are three, are all edged in blue. Under the second schedule referring to rights, easements and privileges included within the lease. At paragraph 1(a) of this second schedule the following wording is to be found: *"Full right and liberty for the lessee and all persons authorised by the lessee (in common with all other persons entitled to the like right) at all times of day or by night and for all purposes to go pass and repass over and along the forecourt and main entrance, passageways, staircases serving the building namely those parts of the building not comprised in this lease or any other lease of a part of the building granted or to be granted by the lessor as shown edged or hatched blue on the plans annexed hereto together with the right to keep a dustbin in the dustbin area designated by the lessors."*

32. Our finding, therefore, is that there does not appear to be an area within the common parts which is used exclusively by other lessees. Furthermore, the fact that there is only one electricity meter and the apportionment of the costs of electricity and cleaning on the basis of the usage, or whatever means may be appropriate other than on a 1/15<sup>th</sup> basis seems to us to be unworkable. We are also satisfied that if one attempted to do this the likely outcome is detrimental to Miss Benmax. She appeared to accept this insofar as the electricity was concerned and it seems to us that the lack of exclusivity means that she should pay a 1/15<sup>th</sup> share of the cleaning, the electricity and the redecorating of the common parts. The gardening costs do not in fact fall within this paragraph.
33. In relation to the insurance premiums, we considered those and breaking them down to a unit basis they seem quite low. Miss Benmax kept alluding to potential commission being received by BLR but no evidence of that was produced and Mr Tucker explicitly confirmed that no commission was in fact earned by the RTM company or BLR Property Management in respect of the insurance of this building. We are satisfied that the insurance premium is reasonable and is therefore payable.
34. Insofar as the legal fees are concerned for the year ending March 2011, there appeared to be a figure in the accounts of £939.50. There is a further figure shown under professional fees of £300. What appears to have happened is that Conway

and Co requested payments on account totalling £1,800 and on production of their final fee note, which was never actually shown to us, there was a credit of £560.50. That left, therefore, a sum of £1,239.50 as being outstanding. However, it appears that Miss Benmax was ordered to pay £450 in respect of the failed application to set aside the award made by our colleagues in 2010. That sum appears to have been recovered in amongst the £2,303.88 which is shown on here statement of account in September of 2010. Accordingly, we believe that that £450 should be credited to the service charge account which leaves a balance of £789.50 payable.

35. On the question of the management fees we have considered the tasks undertaken by BLR during the years in question and note that the management charge, according to the agreement, starts at £220 per unit plus VAT and rises by a small degree for each subsequent year. We have noted, however, that the experts' reports obtained both of a fire and health and safety nature have by and large been ignored. Some works have been put in place, but not much. Furthermore, there appears to be a preponderance of difficulties associated with the development in relation to blocked hoppers, blocked drains and damp. Surveys indicating damp problems within certain flats have been commissioned and paid for. However, no work appears to have been undertaken to correct these problems. Instead major works detailing external and internal decorative issues have been progressed yet the damp problems and the potential ingress of water from the roof has not been addressed. There is no suggestion that the service charges are unpaid, which would inhibit BLR and the Applicants from progressing these works. Indeed, as far as we understand it, Miss Benmax is the only leaseholder who is in arrears. Taking those matters into account, we do think there is a certain lackadaisical approach taken to the management of this development and accordingly we have concluded that the management charge recoverable as a service charge should be limited to the sum of £200 plus VAT for each of the years in question.
36. In the year ending March 2011 we were directed to a surveyor's invoice from HR Surveyors in the sum of £353.91 for attendance at the property and compiling a report. The report is to be found at page 235 in the bundle and is in fact a one and a half page letter following a visit to inspect dampness in Flat 6. It seems to us that the cost is on the high side. There has been no breakdown given of the time spent and the findings made by Mr Banyard do not appear to have been implemented. The charge appears to be at odds with subsequent charges made for similar attendances and similar reports. See, for example, subsequent experts' fees in the year ending March 2013 when a charge of £216 was made for visiting the property and providing a damp report and further charge of £240 for conducting a similar exercise. We therefore conclude that a figure of £200 is reasonable in respect of the surveyor's invoice dated 7<sup>th</sup> April 2010.
37. Postage costs were not challenged. Insofar as the sinking fund is concerned, whilst we believe that in principle such an arrangement is appropriate, the lease does not make provision for such a fund. If all leaseholders agree to make an additional contribution on an annual basis to cover future major works, then so be it. Miss Benmax has not agreed and in those circumstances any overpayment by her, which is taken as a contribution towards the sinking fund should be refundable. We say should be refundable because it appears clear to us that Miss Benmax has not made any payments in respect of service charges for the years that we are required to consider and in those circumstances could not have made any contribution towards

the sinking fund. Indeed, in the statement of account, those sinking fund contributions have been contra-charged. That is not, however, the case with regard to the sinking fund contributions for 2013/14 in the sum of £66.67 and £66.66. Both those items should be removed which would reduce the liability set out on the statement of account accordingly. The administration charge of £600 relating to the preparation of the Section 20 documentation appears to be perfectly reasonable.

38. In the year 2012 there is a further fire risk report. The first report prepared by 4Site says that the position should be reviewed on 24<sup>th</sup> October 2012. In fact it was done nearly a year earlier. We are not wholly clear why it is thought necessary to undertake annual health and safety and fire risk assessments as it does not appear anything changes. Accordingly we disallow the fire risk charge for 2012 in the sum of £364.44.
39. The insurance excess in the same year appears to us to be recoverable. We were told the leak was from an external source which would be the landlord's responsibility and accordingly it seems reasonable for the policy excess to be recoverable as a service charge in those circumstances. The same may not apply if the damage was caused on a leaseholder to leaseholder basis.
40. The asbestos survey fee for which a charge of £474 was made by 4Site Consulting seems to us to be reasonable, although we are doubtful that an annual inspection is appropriate. However, there does not seem to have been any further charge for an asbestos survey.
41. Insofar as the major building works are concerned, the only complaints that Miss Benmax appeared to make related to the cracking and the difficulty with the back door. It seems that the door may well be replaced and the question as to the reasonableness of the costs of decorating in those circumstances may be something that could be considered. However, we have no evidence as to the cost of a replacement door and the element of works relating to the common parts door is £230. We do not, therefore, propose to make any alterations to the major works costs which appear to be reasonable and payable.
42. Insofar as the accounts ending the year 2013 are concerned, we reduce the accountancy fee as we have indicated above to reflect the invoice from Mckenzie Field of £295.57. That seems to us to be the maximum sum that is recoverable. The fire risk invoice on this occasion is payable and we have commented already on the management charge. Insofar as the professional fees for this year are concerned, we find that those are reasonable and payable, dealing as they did with further inspections as a result of dampness within flats.
43. We should deal with the C2 Maintenance invoices in one heading. As we indicated earlier, Miss Benmax was sent away at the conclusion of the first day's hearing to go through the C2 Maintenance invoices to see what charge, if any, she would wish to challenge. There is certainly a repetition in respect of the drainage and damp problems and in the course of the hearing Mr Tucker conceded that certain invoices, particularly those which appeared to relate to an individual leaseholder's concerns, should not be recoverable. We have shown on the attached Scott Schedule those items of expenditure which we have omitted. We hope that this will

ensure that there is clarity as to those items which we have accepted and those which we have not.

44. We then turn to the estimated charges for the year ending March 2014 which were set out on the application at page 13. It was conceded by Mr Tucker that the charge for D&O Insurance, company secretarial fees and residents' management company (a duplicate of the secretarial fees) should be omitted. Otherwise the costs appear to be in line with previous actual expenses and in those circumstances we can see no reason to make further inroads into the surcharge account as requested. However, the final accounts should soon be available and it would perhaps be sensible to await receipt of those before any further demand for this year is made.
45. We then turn to the 2009/10 accounts. In this year Miss Benmax was asked to pay payments on account on 21<sup>st</sup> April 2009 of £637.25 which was the period March 09 to September 09 and a further payment on 2<sup>nd</sup> September 2009 for £637.25 for the period 29<sup>th</sup> September 09 to 24<sup>th</sup> March 2010. As a matter of fact neither payment was made. The actual costs, however, taking into account the figures shown in the final accounts and applying our colleagues' decision in February of 2010, means that the actual charge payable by Miss Benmax is £1,058.59. That sum reflects the decision of our colleagues in 2010, although in some cases the amounts allowed as reasonable estimated costs were higher than the actual costs. We are satisfied, therefore, that the actual figure is £1,089.59. This is merely the product of the sum shown on the final accounts for 2010 of £19117.60 less the contribution to the reserve fund of £3238.62 and divided by 15. Miss Benmax's account needs to be adjusted accordingly and should also reflect the non-payment of the sinking fund for the year 2013/14.
46. Finally, we make no order under the Section 20C as Miss Benmax has had little success other than establishing the position with regard to the sinking fund which she has not made any contribution towards in any event. However, that sinking fund was inappropriate without all leaseholders' agreement and we conclude that whilst we make no order under Section 20C the Applicant should only be entitled to recover 75% of the costs as a service charge. This, however, may be another example of a pyrrhic victory for Miss Benmax because the RTM company may well wish to collect any further costs that have been paid by way of a contribution from each member of the RTM company.

Judge: Andrew Dutton  
A A Dutton

Date: 10<sup>th</sup> March 2014

BETWEEN:

41-47 STATION ROAD RTM COMPANY LTD

Applicant

- and -

MS MARILYN BENMAX

Respondent

SCOTT SCHEDULE

SERVICE CHARGE YEAR ENDED 24 MARCH 2011						
Item No.	Service Charge Item	Total (£)	Disputed Y/N	Respondent's Comments	Applicant's Comments	Reserved for Tribunal
1.0	Accountancy Fees	340.56			<p>No dispute appears to have been raised by the Respondent as to the sum charged for the certification of the service charge account for this period.</p> <p>The Respondent has however submitted in her statement that the Lease requires the Applicant to provide audited accounts. This is presumably due to Clause 4(2)(iii) which states that "...a certificate by the Lessors' Auditors of the total expenditure on Service Obligations..." will be provided to the Lessee. It is the Applicant's opinion, however, that this clause was only intended to imply that the service charge expenditure should be certified by a qualified accountant.</p> <p>Section 21(6) of the Landlord &amp; Tenant Act 1985 (as amended by the Landlord &amp; Tenant Act 1987) requires accounts to be certified by a qualified accountant for any property containing over four units. A 'qualified accountant' is defined under Section 28 of the same act as an independent accountant, who is eligible for appointment as a statutory auditor under the Companies Act 2006.</p> <p>The Applicant uses Mackenzie Field, a firm of chartered accountants, to certify the service charge accounts in</p>	Allowed £281.81

					scenario whereby a single Lessee did not contribute towards the total expenditure relating to all communal areas as the Landlord is given no power to determine how the service charge expenditure may otherwise be split.	
1.3	Electricity to Common Parts	1,368.64			No dispute appears to have been raised by the Respondent within her statement as to the sum charged for lighting the common parts at the property for this period. The Respondent's general contention as to the allocation of the expenditure, as set out in the Applicant's response to Item 1.2 above, would appear to be the only submission in respect of this expenditure.	Allowed as claimed
1.4	Fire Risk Assessment	323.13			No dispute appears to have been raised by the Respondent within her statement as to the sum charged for the Risk Assessment at the property for this period.	Allowed as claimed
1.5	Insurance	2,845.02			<p>The Insurance is arranged by insurance brokers, Christopher Trigg Ltd. The Broker obtains alternative quotations at each renewal to ensure that they can offer the most competitive premium. It is submitted that the level of premium for the insurance cover in this period is reasonable and within market norm for a policy such as this which provides comprehensive cover. The claims history within the last five years is as follows:</p> <ol style="list-style-type: none"> <li>1. 27/08/09 Escape of Water £475 (Settled)</li> <li>2. 01/12/09 Escape of Water £130 (Settled)</li> <li>3. 16/09/11 Escape of Water £530 (Settled)</li> <li>4. 21/07/12 Escape of Water Remains Open</li> <li>5. 26/11/13 Escape of Water Remains Open</li> </ol> <p>The Directors and Officers Liability Insurance is in place for the protection of the leaseholders and is essential as it affords protection against an act of a director which may be financially detrimental to the company. Page Registrars Ltd does benefit from this cover, although its role is purely administrative.</p> <p>A copy of the insurance policies for this period are enclosed at the <b>Exhibit labelled "A"</b>.</p>	Allowed subject to a deduction of £273 for directors cover

				appointment of BLR as managing agent. Whilst no clear justification of this claim is given, the Applicant would submit that the management agreements, which do not exceed 12 months, are not a qualifying long term agreement and thus do not require statutory consultation pursuant to Section 20 of the Landlord and Tenant Act 1985.	
1.9	Company Secretarial Fees	587.50		These are fees charged by Page Registrars Ltd for undertaking all administrative duties on behalf of the company. Page Registrars Ltd's continued involvement with the company is upon the authority of the leaseholder directors.	disallowed
2.0	Professional Fees	300.00		This expenditure relates to Legal Fees. Please refer to response at Item 1.7.	Disallowed see 1.7 above
2.1	Repairs & Maintenance	2,466.36		<p>No clear dispute has been raised by the Respondent within her statement as to the sums charged for Repairs &amp; Maintenance during this period. It is submitted by the Applicant that it need not use the cheapest service available, providing the costs are reasonable.</p> <p>Works within individual flats at times must be charged through the service charge where the cost of the specific job did not exceed the insurance policy excess and thus could not be covered by the policy.</p> <p>BLR do conduct regular inspections of the property and items of maintenance noted during visits are attended to.</p> <p>The Applicant believes this expenditure to be reasonable and reasonably incurred in carrying out its obligations as Landlord.</p>	Reduce by £176.25 and £111.63 as per C2 accounts
2.2	Surveyors/Architects Fees	353.91		This item of expenditure relates to a report prepared by HR Surveyors Ltd dated 31 <sup>st</sup> March 2010 in connection with dampness.	Allow £200 plus VAT and the disbursements claimed
2.3	Postage & Stationary Charges	30.00		No dispute appears to have been raised by the Respondent within her statement as to the sum charged for Postage & Stationary for this period. The Respondent only comments in	Allow, not challenged

3.1	Insurance Claims Excess	250.00			No dispute appears to have been raised by the Respondent within her statement in relation to this expenditure. This expenditure was incurred following an insurance claim made in respect of damage to Flat 2. The total cost was £780.00 and the insurers paid out £530.00 under the policy.	allowed
3.2	Insurance	2,825.74			Refer to response at Item 1.5 above.	allowed
3.3	D&O Insurance	275.60			Refer to response at Item 1.5 above.	disallowed
3.4	Interest Income	-2.43			Refer to response at Item 1.6 above.	
3.5	Management Fee	4,032.00			For this period BLR charged a fee of £224.00 plus VAT per unit. Please also refer to response at Item 1.8 above.	Allowed at £200 plus VAT per flat
3.6	Company Secretarial Fees	600.00			Refer to response at Item 1.9 above.	disallowed
3.7	Professional Fees	474.00			This expenditure relates to fees charged by 4Site Consulting Ltd for conducting an Asbestos Survey on the 25 <sup>th</sup> March 2011. No dispute appears to have been raised by the Respondent within her statement in relation to this expenditure.	allowed
3.8	Repairs & Maintenance	2,397.20			<p>No clear dispute has been raised by the Respondent in respect of this expenditure for this period other than a general comment on the cost being excessive. The Applicant's response to the question of reasonableness can be found at Item 2.1 above.</p> <p>The Respondent has also submitted in her statement for this period that items of repair and maintenance works have been carried out in addition to the building works project. To this we would clarify that the repairs &amp; maintenance expenditure in this period relates to works carried out that were not part of the Schedule of Works and were thus charged separately.</p>	Allowed but excluding £132 (see page 144 of the bundle)
3.9	Postage & Stationary Charges	30.00			Refer to response at Item 2.3 above.	allowed
4.0	Transfer to Sinking fund	3,257.52			Refer to response at Item 2.4 above.	Not allowed as against the Respondent



					Property Services to prune and remove Ivy which was growing over a wall from a neighbouring property. This work was not carried out by London Cleaning UK as their contract extends only to tending the lawns.	
5.0	Insurance	3,078.13			Refer to response at Item 1.5 above.	Allowed less £252.39 for director insurance
5.1	Interest Income	-3.41			Refer to response at Item 1.6 above.	
5.2	Management Fees	4,117.20			For this period BLR charged a fee of £228.73 plus VAT per unit. Please also refer to response at Item 1.8 above.	Allow £200 plus VAT per flat
5.3	Professional fees	456.00			<p>This expenditure relates to two damp reports prepared by HR Surveyors in respect of Flat 1 and Flat 11. HR Surveyors charged £240.00 (incl. of VAT) for the report on Flat 1 and £216.00 (Incl. of VAT) for the report on Flat 11.</p> <p>Both reports identified that the cause of the dampness was external and thus not the responsibility of the Leaseholder as it was an external maintenance issue. Copies of these reports can be found at the <b>Exhibit labelled "C"</b>.</p>	allowed
5.4	Repairs & Maintenance	4,898.94			Refer to response at Item 3.8 above.	Allowed less £132 (page 210 of the bundle)
5.5	Postage and Stationary	30.00			Refer to response at Item 2.3 above.	Allowed
5.6	Transfer from Sinking Fund	-1,346.41			This item is hopefully self-explanatory and no comment appears to have been made by the Respondent in this regard.	
5.7	Retention Payment	383.70			This expenditure relates to monies which were held back from the contractor's final invoice on the second stage of the works pending the expiry of the defects liability period of 6 months. Following the expiry of the defects liability period, this retention sum was paid to the contractor and forms part of the cost of the works.	allowed

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7.0	Residents' Management Company	600.00			Refer to response at Item 1.9 above.	omit
7.1	Postage & Stationary Charges	30.00			Refer to response at Item 2.3 above.	Allowed as a reasonable estimate
7.2	Building Works Expenditure	15,810.00			This estimated figure was included in the 2014 budget to provide funding for the final stage of the building works project, being the internal common parts. Please also refer to response at Item 4.1 above.	It is believed that this relates to the front elevation decoration works and is a reasonable estimate although it is believed that actual costs are available
7.3	Surveyor's Fees	1,581.00			Refer to response at Item 4.2 above.	Allowed as a reasonable estimate