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

- Case Reference** : CHI/21UC/LSC/2016/0078  
CHI/21UC/LSC/2016/0121
- Property** : 1,2 & 3 Osbourne House, 63a Carlisle  
Road, Eastbourne BN20 7BS
- Applicant** : Vanessa Halpern (Flat 1), Dawn Evans  
(Flat 2) & Kenneth Brown (Flat 3)
- Representative** : Montague Young acted as representative  
for Mrs Halpern and Mr Brown  
Mrs Evans represented herself
- Respondent** : Osbourne Properties Limited
- Representative** : Oliver Young
- Type of Application** : Liability to pay service charges
- Tribunal Member(s)** : Judge Tildesley OBE  
Miss C Barton MRICS
- Date and Venue of  
Hearing** : The Law Courts, Old Orchard Road,  
Eastbourne BN21 4UN  
17 February 2017  
28 February Further Representations
- Date of Decision** : 6 April 2017

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DECISION

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## **Decisions of the Tribunal**

1. The Tribunal determines Mr Brown's liability for the years in question as the amounts he actually paid which were £1,222 (2010/11), £1,113.82 (2011/12), £1,286.07 (2012/13), and £1,492.25 (2013/14).
2. The Tribunal decides that the sum of £2,285.25 in the demand of 27 October 2014 is not recoverable from Mrs Halpern, Mrs Evans and Mr Brown.
3. The Tribunal determines that the actual service charge including lift expenditure is £7,744 for 2014/15, and £5,826 for 2015/2016. This represents an overall reduction of £990 for 2014/15, and £1,014 for 2015/2016. The liability of Mrs Halpern and Mr Brown for the years in question will be reduced for each of them by £247.50 for 2014/15 and £253.50 for 2015/16.
4. The Tribunal disallows the sum of £475 for company secretarial work and determines a budget of £7,033 for 2016/17. The amount payable by Mrs Halpern and Mr Brown is reduced for each of them by £118.75.
5. The Tribunal determines that Mrs Evans has no outstanding liabilities in respect of the service charges for 2014, 2015 and 2016.
6. The Tribunal makes no order for costs against the Respondent in respect of the legal fees and postage and stationary expenses incurred by Mrs Evans.
7. The Tribunal makes make an order under Section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings may be passed to Mrs Halpern and Mr Brown through any service charge.
8. The Tribunal determines that the Respondent shall pay Mrs Evans £200 and £100 to Mr Young for Mrs Halpern and Mr Brown within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicants.

## **The Application**

9. Mrs Evans sought a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by her in respect of the service charge years 2013/14 and 2014/15. Mrs Evans application was registered under the case reference number CHI/21UC/LSC/2016/0078.
10. Mr Young on behalf of Mrs Halpern and Mr Brown sought a determination pursuant to Section 27A of the Act as to the amount of service charges payable by Mrs Halpern and Mr Brown in respect of the service charge years 2010/11 to 2016/17 (inclusive). Mrs Halpern and

Mr Brown's application was registered under the case reference number CHI/21UC/LSC/2016/0121.

11. Although the applications were concerned with different issues, they involved the same property, the same landlord and the same lease. In those circumstances the Tribunal heard the applications together at the same hearing.

### **The Hearing**

12. The Applicants appeared in person at the hearing. Mr Young also attended and represented Mrs Halpern and Mr Brown. Mr Oliver Judge in his personal capacity represented the Respondent.
13. The Tribunal had before it three separate bundles of documents, one prepared by Mrs Evans which incorporated the Respondent's bundle, one prepared by Mr Judge in respect of the application by Mrs Halpern and Mr Brown, and one prepared by Mr Young. Mr Brown provided the Tribunal with additional documents during the hearing, in particular copies of the demands for service charges from 15 July 2006 to 17 April 2013, and various items of correspondence. Following the hearing the Tribunal requested further information from Mr Judge, namely, a copy of the demand for 2015 balancing charge, the make up of the 2015 deficit, and service charge statements for Mr Brown, Mrs Evans and Mrs Halpern.
14. The Tribunal inspected the property at the end of the hearing.

### **The Background**

15. Mr Mackelden was responsible for the construction of the property in 2003. The property is of traditional brick cavity construction with a pitched tile roof. The property comprises four storeys with a self contained flat on each floor.
16. There was a drive and parking area at the front of the property with a garden belonging to the demise of Flat 1 at the rear. The front boundary of the property was delineated in part by a brick wall with a high hedge. There was a tree behind a brick post at the other end of the entrance to the drive.
17. The Tribunal's preliminary assessment was that the property had been constructed to a high specification. Inside there were marble effect flooring with decorative metal railings on the stairs. The property had the benefit of an internal lift. The outside windows and doors, and the rainwater goods were of uPVC materials. There was, however, marked signs of disrepair to the iron work on the balconies and the wooden fascias at the rear caused by exposure to weather and its location close to the sea.

18. Mr and Mrs Mackelden sold off three of the flats on long leaseholds of 999 years from 29 September 2003 with a peppercorn rent. Mr and Mrs Mackelden retained the ownership of flat 4 which at the moment is being let on an assured shorthold tenancy.
19. It would appear that in December 2014 Mr and Mrs Mackelden transferred the freehold of the property to Osbourne Properties Limited. Mr and Mrs Mackelden are directors of the company with Mr Mackelden as the controlling party.
20. Mrs Halpern has owned the leasehold to Flat 1 since 18 August 2014. Mrs Evans was the leaseholder of Flat 2 from April 2012 to 16 July 2015. Mr Brown has been the leaseholder of Flat 3 from around 2005/2006.
21. The leases of flats 1, 2 and 3 were in the same form. The term was granted subject to each leaseholder paying one quarter of the expenditure<sup>1</sup> which the landlord may from time to time expend and or as may be reasonably be required on account of anticipated expenditure in performing the landlord's obligations under the lease (clause 1(b)). The leaseholders were required to pay the amounts within 14 days of being demanded.
22. Clause 3(17) sets out the leaseholder's covenant to contribute and pay a one quarter share of the costs expenses outgoings and matters mentioned in the Fourth schedule (excluding the lift) and that in respect of the costs expenses outgoings and matters relating to the lift to contribute and pay a third share. The lift expenses were shared between the leaseholders of flats 2, 3 and 4.
23. Part 1 of The Fourth schedule lists the types of costs that can be recovered under clause 3(17) which includes amongst others:
  - a) The costs and expenses incurred by the landlord in carrying out his repairing and maintenance obligations under the lease which including keeping the common parts and entrances in good order, and in insuring the building.
  - b) The cost of insurance against thirds party risks.
  - c) The fees and disbursements to any managing agent appointed by the landlord.
  - d) The fees and disbursements paid to any accountant solicitor or other person in relation to the preparation, audit or certification of the accounts.
  - e) All other expenses incurred by the landlord in or about the maintenance and proper and convenient management and running

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<sup>1</sup> One third in case of expenditure on the lift.

of the building including in particular any interest paid on any money borrow by the Landlord to defray any expenses incurred by it and specified in the Schedule.

- f) Any VAT payable on the costs incurred.
  - g) All costs and expenses of whatsoever incurred by the Landlord (including any proper sum for future or contingent liabilities and any reasonable reserve).
  - h) Such sum or sums as shall be estimated by the Managing Agents or the landlord to provide a reserve to meet all or some or any of the costs which the managing agent or landlord anticipate will or may carry arise during the remainder of the term granted by the lease (the sums under this paragraph will be called the reserve fund).
24. Under paragraph 10 of Part 11 of the Fourth Schedule the landlord is required to supply to the leaseholder not less frequently than once every year a summary of the costs expenses outgoings and matters mentioned in Part 1 of this schedule for the previous year (the first which accounts shall relate to the year ended 25 March 2005).

### **The Law**

25. The Tribunal has power under Section 27A of the 1985 Act to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant or determined by a Court.
26. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
27. When determining whether a service charge has been reasonably incurred the Tribunal must be satisfied that the decision to incur cost is reasonable and that the actual cost is reasonable.
28. The question of whether works or services have been done to a reasonable standard is a matter of evidence. If the Tribunal determines that the standard has fallen short the appropriate order is to make a deduction in the amount charged rather than excluding the costs in their entirety.
29. The relevant legal provisions are set out in the Appendix to this decision.

## The Issues

30. The Tribunal identified the following issues:
- The payability and/or reasonableness of service charges for the years 2010/11, 2011/12, 2012/13 and 2013/14. This affected Mr Brown only.
  - The year end deficit of £2,285.25 (“Directors Loan”) which affected all the leaseholders.
  - The payability and/or reasonableness of service charges for the years 2014/15 and 2015/16 (Mr Brown and Mrs Halpern).
  - The reasonableness of the budget for 2016/17 (Mr Brown and Mrs Halpern)
  - Mrs Evans liability to pay the shortfall in the service charge accounts for 2015 and 2016.
  - Mrs Evans’ costs in connection with the application.
  - Reimbursement of fees and section 20C order
31. The leaseholders raised a range of other issues including alleged breaches of landlord’s covenants, failure to comply with section 21 of the 1985 Act, and a referral to HMRC. These are matters that go beyond the Tribunal’s jurisdiction in respect of service charges. Mrs Evans also asked the Tribunal to give her the benefit of any reductions in service charges ordered by the Tribunal in Mr Brown and Mrs Halpern’s favour.

### **The payability and/or reasonableness of service charges for the years 2010/11, 2011/12, 2012/13 and 2013/14**

32. Mr Young on behalf of Mr Brown prepared a “Scott Schedule” for 2010/11 to 2013/14. Mr Young challenged the same four items of expenditure in each of the disputed years:
- **Cleaning:** Mr Young asserted that the charge should not be more than £500 per annum.
  - **Gardening:** Mr Young stated there was no garden in the common areas to justify a charge.
  - **General Repairs:** Mr Young requested details of the accounts to substantiate the charges.
  - **Audit/Accountancy:** Not authorised under the lease as this was an expense of the company and not a service charge item.
33. Mr Judge challenged Mr Young’s assertion that there was no garden at the property. According to Mr Judge, the services of a gardener were required to tidy the drive and the hedge at the front of the property.
34. Mr Judge pointed out that paragraph 4 of Part 1 to the Fourth Schedule enabled the landlord to recover the fees and disbursements paid to any accountant in relation to the preparation of any accounts of

the costs, expenses, outgoings and matters which the landlord could recover from the leaseholders under the terms of the lease.

35. Mr Judge for the Respondent produced copies of the Financial Statements for Osbourne Properties Limited for the years in dispute. These unaudited statements had been prepared by Ward Mackenzie, Chartered Accountants, from accounting records, information and explanations supplied to the accountants. The statements included a profit and loss account which showed that expenditure had been incurred on the property, and on services during the years in question. The Applicant relied on the profit and loss account to demonstrate that the landlord had incurred expenditure in fulfilling its obligations under the lease. The Respondent, however, had not supplied any invoices to substantiate the expenditure.
36. The Tribunal discovered at the hearing that Mr Young had prepared his "Scott Schedule" on the budget figures rather than on actual expenditure. This was because Mr Brown had only received demands for service charges payable in advance for the year ahead. The Respondent had not issued subsequent demands for balancing charges at the end of the service charge year. Thus at the time Mr Young compiled the "Scott Schedule" he only had before him the budget figures which were on the reverse of the demands issued to Mr Brown.
37. The Tribunal was unable to reconcile the amounts recorded on the "Scott Schedule" with those in the financial statements. Also the types of expenditure were recorded differently. The budget broke down the expenditure into various heads such as cleaning, gardening and repairs and maintenance. In the financial statements these items of expenditure were lumped together under either "premises expenses" or "sundry expenses". The financial statements, however, recorded other items of expenditure separately, such as management fees, lift maintenance, insurance, accountancy, management fees and gardening. The position was complicated further because the budget figures on the reverse of the demand also included the actual spend of the previous year which did not marry with the figures in the financial statements.
38. The Tribunal has performed an analysis of the actual spend with the budget for each year in question as appeared on the reverse of the demands supplied by Mr Brown.

<b>Year</b>	<b>Budget (£)</b>	<b>Actual (£)</b>
2010/11	4,699.00	5,732.01
2011/12	4,305.29	5,499.99
2012/13	4,998.45	5,035.49
2013/14	5,819.00	No figure available

39. The analysis showed that Mr Brown has probably benefitted from the Respondent's failure to demand balancing charges.

40. The Tribunal also noted that Mr Brown did not challenge the service charges at the time, and he was up to date with his payments as at 2 April 2014.
41. The Tribunal is satisfied that the Respondent was entitled to recover the expenditure incurred on audit and accountancy from the leaseholders in accordance with the terms of the lease.
42. Mr Young argued that they were not recoverable because the expenditure related to the preparation of financial statements to discharge Osbourne Properties Limited responsibilities under the Companies Act 1976. According to Mr Young, the financial statements were not service charge accounts. Also Mr Young stated that Osborne Properties Limited was not the freeholder at the time the accounts were prepared.
43. The Tribunal considers the wording of paragraph 4 of part 1 wide. The paragraph refers to the preparation of **any** accounts of the costs, expenses, outgoings and matters in connection with the discharge of the landlord's responsibilities under the lease. The profit and loss accounts included in the financial statements showed details of the costs incurred on services in relation to Osbourne House. The demands were issued in the name of Osbourne Properties, and the leaseholders were required to make their cheques payable to Osbourne Properties Limited.
44. The Tribunal makes the following findings of fact in relation to the disputed items under the service charges for 2010/11, 2011/12, 2012/13 and 2013/14:
  - a) The terms of the lease authorised the recovery of expenditure on cleaning, gardening, repairs and maintenance and audit and accountancy by the Respondent from the leaseholders.
  - b) The Respondent had incurred expenditure on cleaning, gardening, repairs and maintenance and audit and accountancy.
  - c) Mr Brown had not challenged the expenditure at the time of the demands and had paid his contribution to the service charge.
  - d) Mr Young on Mr Brown's behalf adduced no evidence of alternative quotations for the cleaning and gardening, and produced no evidence that the services provided in the years in question fell below the standard reasonably expected from such services.
  - e) The Respondent did not require payment of an additional charge in the years in question with the exception of the repayment of directors loan at the end of 2013/14 which is considered separately.



45. The Tribunal, therefore, determines Mr Brown's liability for the years in question as the amounts he actually paid which were £1,222 (2010/11), £1,113.82 (2011/12), £1,286.07 (2012/13), and £1,492.25 (2013/14).

**The year end deficit of £2,285.25 ("Directors Loan")**

46. On 27 October 2014 the Respondent served a demand on each leaseholder in the sum of £2,285.25 which represented the leaseholder's share of the end year deficit for the year 2013/2014.
47. At the same time the unaudited financial statements for the year ended 31 March 2014 were served on the leaseholders showing a deficit of £9,141 on the profit and loss account, which apparently related to a directors loan made by Mr Mackelden in the sum of £9,307.
48. On 10 December 2014 Mrs Evans requested information from AMP Management Limited, managing agent, about the deficit including vouchers and supporting documentation.
49. On 16 December 2014 the managing agent referred the matter to Ward Mackenzie, the Respondent's accountants.
50. On 4 May 2015 Mrs Evans contacted HML Hathaways, the new managing agent, because Mrs Evans was still receiving reminders about paying the demand for £2,285.25.
51. On 5 June 2015 Ms Tarrant of HML Hathaways apologised to Mrs Evans and Mr Young regarding the reminders and advised that the demand had been put on hold until the deficit had been clarified and explained by Ward Mackenzie.
52. On 1 July 2015 the leaseholders met with Ms Tarrant and Ms Wardle of the managing agent in flat 3. Ms Tarrant informed the leaseholders that the whole of the directors loan had been written off following a thorough investigation by Mr Leach of Ward Mackenzie. Mr Leach had concluded that the debt was over 18 months old and that there was insufficient documentary evidence to support Mr Mackelden's claim.
53. On 24 July 2015 Ms Wardle wrote to Mr Brown of flat 3 confirming that the figure of £2,285.25 was on hold and that he should receive no further requests for this amount. Ms Wardle stated that it was hoped that this amount would be removed from Mr Brown's account in full once the managing agent had received written confirmation from Ward Mackenzie to write off the sum.
54. After hearing nothing further about whether the £2,285.25 has been written off. Mrs Evan's contacted Mr Leach of Ward Mackenzie who advised that Mr Mackelden had deemed his recommendation a waste of time.

55. On 21 November 2016 Ward Mackenzie wrote to the Directors of Osbourne Properties Limited marked Private & Confidential explaining the status of the director's loan. The Respondent disclosed this letter in its Response to Mrs Evans' Statement of Case. The letter said:

"We are writing to confirm that we acted for Osbourne Properties Limited since 2007. The previous accountants produced the figures for the period ended 31 March 2006 and a director's loan was included in the handover figures showing a liability to A Mackelden in the sum of £6,833.

In the years following loans were made to Osbourne Properties Limited from Five Walk Group Companies by way of payment for legitimate expenses. These loans built up to £10,525 in 2013 when they were written off by the directors.

The outstanding debt due to the director A Mackelden is still outstanding and currently stands at £9,307".

56. Mr Mackelden said the director's loan on the accounts represented money paid by him to assist with the running of the property when there was insufficient funds in the bank account to pay outstanding bills. Mr Judge contended the loan was legitimate service charge expenditure which had been documented in the end of year accounts.
57. The Tribunal accepts that the "loan" represented monies paid by Mackelden to discharge various debts on the property, which probably were recoverable from the leaseholders through the service charge.
58. The Respondent, however, has not substantiated Mr Mackelden's assertion by providing details of the debts that he discharged in respect of the property. Further Mrs Evan's evidence of her discussions with the managing agent together with Ward Mackenzie's letter of 21 November 2016 suggested that the debts were old and that the demand for £2,285.25 related to expenditure that had been incurred more than 18 months before the date of the demand. Finally the deficit related to expenditure that had been incurred before 25 March 2014 which was prior to Mrs Halpern's acquisition of the lease to flat 1 on 18 August 2014.
59. The Tribunal decides that the sum of £2,285.25 in the demand of 27 October 2014 is not recoverable from Mrs Halpern, Mrs Evans and Mr Brown. The Tribunal is satisfied that the Respondent has adduced no evidence to substantiate that the sum claimed related to expenditure recoverable under the terms of the lease within the 18 month time limit imposed by section 20B of the 1985 Act. Further the Tribunal finds in the case of Mrs Halpern that in addition she is not liable to pay the demand because it related to expenditure that was incurred before she acquired the leasehold of flat 1.

## **The payability and/or reasonableness of service charges for the years 2014/15 and 2015/16**

60. The actual service charge for 2014/15 was £8,734 which comprised £2,589 premises expenses, £815 lift maintenance, £382 gardening, fixed management fees of £1,518, accountancy £918, legal and professional fees £1,280, insurance £1,218 and sundry expenses of £14.
61. The actual service charge for 2015/16 was £6,840 which comprised £842, cleaning, £350 for window cleaning, £1,301 general maintenance, £525 lift maintenance, £(131) gardening, fixed management fees of £888, accountancy £518, legal and other professional fees £756, insurance £1,216, utilities £355, telephone & fax £144 and sundry expenses of £76.
62. The income and expenditure accounts for year ended 24 March 2016 gave a more detailed breakdown of the service charge expenditure than the financial statements for previous years. The 2016 accounts also had details of the reserve fund which stood at £2,000 for the year end of 24 March 2016.
63. In the "Scott Schedule" Mr Young challenged the expenditure in both years on cleaning, gardening, general repairs, accountancy and the managing agent's fee for acting as company secretary. Mr Young also queried the reserve fund entry for 2016.
64. Mr Young cited the budget figures in the "Scott Schedule". The Tribunal has applied the figures for actual expenditure in its determination.
65. The 2014/2015 service charge accounts did not identify a separate charge for cleaning. The Respondent said that Thor Commercial Cleaning (renamed the Gleam Team) was responsible for cleaning the common parts weekly and the windows every four weeks. Thor Commercial Cleaning charged £140 every four weeks which comprised £22.50 a week for cleaning the common parts and £50 for the windows. This equated with an annual charge of £1,820 for 2014/15. The charge for cleaning was £1,192 for 2015/2016. The Respondent provided invoices from the cleaning contractor to substantiate the expenditure for the period from 1 April 2014 to 1 September 2015.
66. Mr Young argued that the charge for cleaning was too high and that it should be no more than £500. Mr Young did not supply alternative quotations for the cleaning. His case for a reduction was based on the standard of services supplied by the cleaning contractor.
67. The hearing bundle contained emails from Mr Young and the new leaseholder of flat 2 complaining about the non-attendance of the cleaners. In an email dated 3 November 2015 Mr Young said that the attendance by the cleaners was fitful until the beginning of September 2015, often there were absences for weeks at a time, and that the windows had been cleaned twice in 2014/15, and twice in 2015/16. On

21 November 2016 Mr Young informed the managing agent that no cleaners had attended for the past two weeks. On 24 November 2015 the managing agent terminated the contract of the cleaners.

68. The Respondent made no challenge to Mr Young's evidence of the spasmodic attendance of the cleaners at the property. The action of the managing agent in terminating the contract gave credence to Mr Young's statement. The Tribunal, therefore, finds that the cleaning contractor did not provide the level of service as specified in its invoices. The Respondent was responsible for ensuring that the cleaners provided their services to a reasonable standard. In those circumstances the Tribunal is satisfied that the charge for cleaning should be reduced for both years. Mr Young has not supplied precise details of when the cleaners did not attend the property. The Tribunal applying its judgment reduces the cleaning charge for communal area and window cleaning in each year to £910 which was a reduction of £910 in 2014/15 and £210 in 2015/16.
69. The charge for gardening in 2014/15 was £382, whilst in 2015/16 a refund of £131 was recorded against gardening in the service charge accounts. The Respondent included in the bundle invoices from Countrywide Grounds Maintenance for the period April to June 2014 charging £20 plus VAT per month for grounds maintenance at the property, three invoices from S C Funnell who charged £50 on 3 February 2015, and £45 each on 5 March 2015 and 7 April 2015, and one invoice from Squire Lawn and Gardens of £40 on 4 November 2015.
70. Mr Young argued there should be no charge for gardening because there was no communal garden at the property. The Respondent pointed out that the charges were for keeping the drive clean of litter and debris, and pruning the sycamore tree and the hedge. Mr Judge said the costs charged by the various contractors in 2014/15 were competitive. Mr Judge produced a quotation of £350 plus VAT from County Tree Surgeons dated 10 November 2016 for reshaping and pruning the sycamore tree and hedge.
71. The Tribunal observes with the refund in the 2016 account, the total cost of keeping the front area of the property clean and tidy was £251 over a two year period. Mr Young produced no alternative quotations for the "gardening" works. Mr Young in an email dated 10 November 2015 complimented the managing agent on the very clean forecourt. The Tribunal is satisfied the costs incurred on the drive and the vegetation were reasonable. The Tribunal confirms the amounts for gardening as set out in the 2015 and 2016 accounts.
72. Mr Young contested the charges for repair and maintenance. There was no amount specified in the 2014/15 financial statements because the costs had been lumped in with cleaning and utility expenditure under general premises costs. The 2016 accounts recorded an amount of £1,301 for general maintenance.

73. Mr Young's challenge was that no accounts had been supplied for the expenditure. Mr Young based his challenge on the budget rather than on the actual accounts. The Respondent in the hearing bundle had included the invoices for 2014/15 relating to the fitting of a notice-board, the replacement of a porch lamp and lamp on the pillar, and the replacement of a smoke detector in the lift shaft. The expenditure of £1,301 in 2015/16 was largely accounted for in fees to a surveyor in the sum of £1,261.06 preparing detailed schedules of work relating to external repairs and maintenance at the property.
74. Mr Young appeared to be content with the information provided. Mr Brown pointed out that the external repairs referred to in the surveyor's invoice had not been carried out.
75. The Tribunal is satisfied that the amounts allocated to repairs and maintenance and more particularly described in the invoices above have been reasonably incurred.
76. Mr Young disputed the respective sums of £918 (2014/15) and £518 (2015/16) for accountancy on the ground that the preparation of accounts was a company expense and not authorised by the lease.
77. The Tribunal adopts its reasoning in paragraph 43 above and confirms that the expenditure on accountancy fees for the preparation of accounts which included details of service charge expenditure was a legitimate service charge expense.
78. The accountancy charge of £918 in the 2014/15 accounts was significantly higher than the accountancy charge for the preceding and subsequent years. The charge included an invoice of £500 (£416.67 plus £83.33 VAT) from AMP Management Limited which had recently been appointed as managing agent for their work in reconciling the accounts and the loading up of opening balances. The Tribunal considers that these costs would be recoverable under the terms of the lease. Mr Young did not question whether the amount of the costs was reasonable. In those circumstances the Tribunal has not considered the reasonableness of the accountancy costs.
79. The Tribunal notes that the invoice of Ward Mackenzie dated 30 November 2015 was in the sum of £370 plus £74 Vat, and included a sum for the preparation of tax computations for submission to HM Revenue and Customs. The previous year's invoice of £300 plus VAT of £60 VAT was limited to the preparation of financial statements. The Tribunal takes the view the work done in relation to tax computations is a company expense and not recoverable under the service charge. The Tribunal, therefore, decides that the amount recoverable as service charge in relation to the Ward Mackenzie invoice for 2015/16 is £300 plus £60 VAT.

80. The Tribunal, therefore, determines an accountancy charge of £918 for the year ended 31 March 2015, and a charge of £434<sup>2</sup> for the year ended 31 March 2016.
81. Mr Young disputed the managing agent's charge for acting as company secretary for Osbourne Properties Limited.
82. The bundle included two invoices from AMP Management Ltd in relation to their services as company secretary in the year ended 25 March 2015 which were £30 for completing the annual return [239] and £50 for March 2015 [278]. The Tribunal found no other evidence of such charges for the year ended 25 March 2015.
83. HML Andertons charged £720 for professional fees for the year ended 25 March 2016 [329]. The Tribunal understood that this invoice related to company secretarial services for Osbourne Properties Limited.
84. Mr Young argued that the fees for company secretarial work had nothing to do with the maintenance and repair of the building and with the collection of service charges. Mr Young asserted the fees were a corporate expense and not recoverable from the leaseholders.
85. The Respondent contended that the expenditure was recoverable under paragraphs 6, and paragraph 8 to part 1 of the Fourth Schedule. Paragraph 6 enables the landlord *to recover all other expenses incurred in and about the maintenance and proper and convenient management and running of the building*. Paragraph 8 is a sweeping up clause and is construed in the context of the charging provisions. Paragraph 8 only allows the landlord to recover the expenditure if it has some connection with the building.
86. The Tribunal agrees with Mr Young's submission. The fees for company secretarial work were necessary because of the Respondent's corporate status. They were a company expense payable by the shareholders. The fees had nothing to do with the Respondent's responsibilities in relation to the building, and were not recoverable through the service charge. The fees were distinguishable from the accountants' fees because the financial statements also acted as the service charge accounts.
87. The Tribunal, therefore, disallows £80 and £720 for company secretarial work from the service charges for the years ended 25 March 2015 and 2016 respectively.
88. Mr Young queried the amount kept in reserves. Mr Young had a figure of £7,215 which appeared in the 2015 column in the income and expenditure account for the year ended 24 March 2016. It would appear that this represented the surplus of service charge receivable (£15,949) over the total expenditure (£8,734). The service charge

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<sup>2</sup> =£518-(£444-£360).

receivable, however, included the disputed demand of £2,285.25 against each leaseholder. The Tribunal has determined that the demand of £2,285.25 is not payable by Mrs Halpern, Mrs Evans and Mr Brown, which would effectively extinguish the surplus.

89. The Tribunal notes that the actual amount held in reserves was £2,000 [157]. The Respondent is entitled under the lease to recover sums from the leaseholders for the purposes of any reasonable reserve<sup>3</sup>.
90. The Tribunal determines that the actual service charge including lift expenditure is £7,744 for 2014/15, and £5,826 for 2015/2016. This represents an overall reduction of £990 for 2014/15, and £1,014 for 2015/2016. The liability of Mrs Halpern and Mr Brown for the years in question will be reduced for each of them by £247.50 for 2014/15 and £253.50 for 2015/16.

### **The reasonableness of the budget for 2016/17**

91. The budget for the year ended 24 March 2017 was £7,508 of which £2,025 related to lift expenditure.
92. The Tribunal is concerned here with anticipated expenditure not actual expenditure. In this regard the Tribunal has to be satisfied that the Respondent is entitled under the lease to collect service charges on account, and that the anticipated expenditure is no greater than reasonable. The leaseholders are entitled once the expenditure has been incurred to challenge the reasonableness of the actual expenditure.
93. Clause 1(b) of the lease enables the Respondent to demand charges on account of anticipated expenditure. The Tribunal assesses the question of reasonableness from the facts known at when the payment was first due, which in this case was the 8 April 2016 (14 days from 25 March 2016).
94. Mr Young challenged the budgets for audit and accountancy, company secretarial, bank charges, postage/couriers and administration fee on the ground that the proposed charges were not recoverable under the lease.
95. The Tribunal applies its previous determinations in respect of audit and accountancy and company secretarial. The budget for the remaining three items totalled £65. The Tribunal is satisfied that the expenditure is necessary to discharge the landlord's responsibilities in respect of the administration and collection of service charges.
96. Mr Young also queried the VAT on the managing agent's charge. The managing agent is VAT registered and its registration number appeared

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<sup>3</sup> See paragraphs 8 & 9 to Part 1 of the Fourth Schedule and Paragraph 11 to Part 3 of the Fourth Schedule.

on the invoice. Paragraph 7 of part 1 to the Fourth Schedule authorises the landlord to recover from the leaseholders VAT on charges and services. In the Tribunal's view, VAT on services forming part of the service charge is recoverable regardless of authority under the lease. What the landlord cannot do is add VAT to the service charge itself.

97. Mr Young challenged the allocation of £1,000 for general repairs but did not follow it through with substantive grounds of objection. The Tribunal having regard to past expenditure, the nature of the building and the number of outstanding maintenance issues considers that the sum of £1,000 is reasonable.
98. The Tribunal, therefore, disallows the sum of £475 for company secretarial and determines a budget of £7,033 for 2016/17. The amount payable by Mrs Halpern and Mr Brown is reduced for each of them by £118.75.

**Mrs Evans' liability to pay the shortfall in the service charge accounts for 2015 and 2016.**

99. Mrs Evans sale of the leasehold for Flat 2 was completed on 16 July 2015.
100. Mrs Evans' solicitor was holding £3,685.67 as a retainer in respect of
- 2014 Year end deficit of £2,435.67
  - 2015 Year end deficit of £1,000
  - 2016 Year end deficit of £250
101. Mrs Evan's liability as at the hearing was 2014 year end deficit of £2,435.67 (Director's loan £2,285.25 plus £150<sup>4</sup>), 2015 balancing charge of £529.83, and 2016 liability of £549.97 making a total of £3,515.47.
102. Mrs Evan's liability following the decisions of the Tribunal are 2014 year end deficit of £150, a 2015 balancing charge of £282.83<sup>5</sup>, and a 2016 liability of £470.01<sup>6</sup> making a total of £902.84.
103. The Tribunal understands that Mrs Evans has paid the sum of £1,262.33 to the Respondent to discharge her service charge liabilities for the years in question. The £1,262.33 comprised two direct debits of £150 and a cheque for £962.
104. The Tribunal finds that the amount paid by Mrs Evans exceeds her outstanding liability for the service charges for the years ended 2014, 2015 and 2016.

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<sup>4</sup> Mrs Evans missed one monthly payment of £150 during the year.

<sup>5</sup> The balancing charge of £529.83 is reduced by £247.50 = £282.83

<sup>6</sup> = (£6,171 -£1,014) = £5,157/4 = £1289.25x114/366 = £401.56 + £69.45 (lifts) = £471.01



105. The Tribunal has no power to order repayment of service charges. In those circumstances the Tribunal determines that Mrs Evans has no outstanding liabilities in respect of the service charges for 2014, 2015 and 2016.

### **Costs, Application under S20C and refund of fees**

106. Mrs Evans said that she incurred legal costs of £612 in an attempt to resolve the dispute without resort to the Tribunal. Mrs Evans produced an invoice from Hart Reade dated 29 July 2016 substantiating the costs claimed. Mrs Evans requested the Tribunal order the Respondent to pay her legal costs and also her expenses on stationary and postage which she spent on preparation for the hearing.
107. The Tribunal generally operates as a no costs forum, and will only order costs against a party if that party has acted unreasonably in connection with the proceedings.
108. The Tribunal observes that the legal costs of £612 were incurred prior to the commencement of the proceedings before the Tribunal in August 2016, and, therefore, falls outside the period for which the Tribunal can consider an order for costs.
109. The Tribunal notes that the Respondent's representative did not attend the conference call. Mr Judge admitted that he had forgotten about it. Also the Respondent did not initially comply with the directions because the representative said he had not received the necessary papers from the Tribunal.
110. The Tribunal decides the Respondent had not deliberately flouted the directions and that his conduct did not cross the high threshold of unreasonableness for an order of costs to be considered.
111. The Tribunal makes no order for costs against the Respondent in respect of the legal fees and postage and stationary expenses incurred by Mrs Evans.
112. In the application form Mr Young applied for an order under Section 20C of the 1985 Act preventing the Respondent from recovering its costs in connection with the Tribunal proceedings through the service charge. Mrs Evans did not make an application as she is no longer a leaseholder.
113. The Tribunal is not convinced that the terms of lease enable the Respondent to recover its costs. For the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under Section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge in respect of Mrs Halpern and Mr Brown. In reaching

this conclusion the Tribunal finds that the application was properly brought and that Mrs Halpern and Mr Brown have had reasonable degree of success in respect of the charges they contested.

114. At the end of the hearing, the Applicants applied for the Respondent to reimburse them with their Tribunal fees. Mrs Evans, and Mr Young each paid £200 in fees (£100 application fee with the £200 hearing fee shared between them).
115. The Tribunal discretion to order reimbursement is not fettered, and there is no threshold of unreasonableness. Mrs Evans has been wholly successful with her application. Mrs Evans took steps to settle the dispute prior to her application to the Tribunal. Mrs Evans made a without prejudice offer. In those circumstances the Tribunal orders the Respondent to reimburse Mrs Evans with £200 which is payable within 28 days. Mr Young was partly successful on behalf of Mrs Halpern and Mr Brown. The Tribunal orders the Respondent to reimburse Mrs Halpern and Mr Brown with one half of the fees paid making a total of £100, which is payable within 28 days.
116. The Tribunal notes that the statements of accounts for Mrs Halpern and Mr Brown include charges for debt collection including an instruction fees. These charges were not before the Tribunal.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. 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

## **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 provisions 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 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.

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.