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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00FY/LIS/2013/0029**
Property	:	**10 Fleming House, City Heights, Ockbrook Drive, Mapperley Nottingham NG3 6AT**
Applicant	:	**John Greenwood**
Representation	:	**Mr Neil Healey of MPM Limited**
Respondents	:	**(1) Holdings and Management (Solitaire) Limited** **(2) CHC-Land Limited**
Representation	:	**(1) Ms Lindsay King de Lagrutta (solicitor)** **(2) Ms Amanda Gourlay of counsel**
Type of Application	:	**Under Sections 27A and 20C Landlord and Tenant Act 1985 ('the Act')**
Date of Application	:	**4th July 2013**
Date and venue of Hearing:		**Nottingham Magistrates Court on 5th and 6th August 2014 and 23rd and 24th October 2014**
Tribunal Members	:	**Judge W J Martin** **Mr J E Ravenhill F R I C S**
Date of Decision	:	**7th January 2015**

DECISION

Preliminary

1 On 4th July 2013 the following applications ('the original Applications') were made to the Tribunal in respect of the following properties in the six Blocks that comprise the City Heights development at Ockbrook Drive, Mapperley, Nottingham NG3 6AS ('City Heights').

BIR/00FY/LIS/2013/0029	10 Fleming House	John Greenwood
BIR/00FY/LIS/2013/0028	57 Nightingale House	Maria Potter
BIR/00FY/LIS/2013/0030	22 Lister House	Paul Whiteside
BIR/00FY/LIS/2013/0031	1 Franklin House	Tamasine Swift
BIR/00FY/LIS/2013/0032	5 Jenner House	Angus Mann
BIR/00FY/LIS/2013/0033	25 Pasteur House	Lorraine Horsley

2 The First Respondent was named as the Respondent in all of the original Applications. By its first Directions Order dated 19th July 2013, the Tribunal directed that Pursuant to rule 23 (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Procedure Rules'), the application BIR/00FY/LIS/2013/0028 ('the Potter Application') was specified as the lead case and that the remaining applications referred to in paragraph 1 above were the related cases. The Tribunal stayed the related cases.

3 By Directions Order No 2 dated 25th September 2013, the Tribunal directed that the Second Respondent be joined into the proceedings.

4 On 7th February 2014 Angus Mann withdrew his application in respect of 5 Jenner House and on 10th February 2014 Maria Potter withdrew the Potter Application. The Second Respondent agreed in writing to both of the withdrawals on 11th February 2014.

5 Under its powers contained in Rule 22 of the Procedure Rules, the Tribunal consented to the withdrawal of the Potter Application and the application made by Mr Mann in respect of 5 Jenner House ('the Mann Application').

6 Rule 23 (8) of the Procedure Rules provides that where the lead case is withdrawn the Tribunal must give Directions as to whether another case shall be specified as the lead case.

7 On 6th February 2014 Russell Blagg made an application to the Tribunal in respect of the same issues as the Potter Application [BIR/00FY/LSC/2014/0004] relating to 2 Nightingale House ('the Blagg Application').

8 On 7th February 2014 Adam Acid made an application to the Tribunal in respect of the same issues as the Mann Application [BIR/00FY/2014/LSC/0004] in respect of 9 Jenner House ('the Acid Application').

9 By Directions Order No 6 dated 19th February 2014, Pursuant to Rule 23 (2) of the Procedure Rules, the Tribunal Directed that the Application made by John Greenwood in respect of 10 Fleming House [BIR/00FY/LIS/2013/0029] ('the Greenwood Application') was specified as the lead case, and that the remaining original Applications are related cases that shall remain stayed.

10 The Tribunal further ordered that the Blagg Application and the Acid Application were both consolidated with the remaining Original Applications and the Greenwood Application under the powers contained in Rule 6 (3) (b) of the Procedure Rules, and that the Blagg Application and the Acid Application are related cases which were thereby stayed in accordance with Rule 23 (2) of the Procedure Rules.

11 The original Applications requested a determination under section 27A (1) of the Act as to the payability and the reasonableness of the service charges levied in respect of the flat owned by each of the original Applicants in the six Blocks at City Heights. The period in respect of which a determination was required were stated to be (1) 1st April 2009 to31st March 2010 and (2) 1st April 2010 to 31st December 2010. The reason for the shorter second period is that on 1st January 2011 City Heights RTM Company Limited acquired the Right to Manage City Heights under the provisions relating thereto contained in the Commonhold and Leasehold Reform Act 2002.

12 The First Respondent was the freeholder in respect of City Heights during the above periods, and for the year 1st April 2009 to 31st March 2010 carried out the management of City Heights through Solitaire Property Management Limited, one of its associated companies. In respect of this period, the First Respondent and the Applicant have reached an agreement, and accordingly the only remaining period in respect of which a determination is required is the second period, from 1st April 2010 to 31st December 2010. During this period, the Second Respondent was appointed by the First Respondent to carry out the management on its behalf. There is no connection between the First and Second Respondents.

13 In connection with this period, the First Respondent requested that the Second Respondent be joined into the proceedings, as the First Respondent claimed that it was unable to comply properly with the Tribunal's Directions, owing to a stated lack of co-operation by the Second Respondent. By its Direction Order No 2 dated 25th September 2013, the Tribunal ordered that the second Respondent be joined, and that disclosure of documents requested by the Applicant was made.

14 By its Directions Order No 3, dated 3rd October 2013, the Tribunal varied the disclosure order contained in Directions Order No 2, and, having considered a request from the Second Respondent that it be removed from the proceedings, determined that it would not consent to that request. There were further Directions Orders made, Number 4 dated 13th November 2013, and Number 5 dated 9th December 2013 (which followed a Hearing as to Disclosure).

15 Direction Order 7, which was made on 29th May 2014, following applications for striking out by both Respondents, refused those applications and further amended the time limits for compliance.

16 Following eventual compliance, the Applicant prepared Scott Schedules in respect of the service charge items in dispute, and a Hearing was commenced at Nottingham Magistrates Court on 5th August 2014.

City Heights

17 There are a total of 168 Flats and one house altogether at City Heights in six Blocks. Nightingale House is the largest Block and is a conversion from the Mapperley Hospital. Nightingale House comprises 55 Flats and the one house. All of the other Blocks are new buildings constructed by David Wilson Homes Limited in the grounds of the former Hospital. The main roads serving the development are all now adopted. City Heights lives up to its name in that it commands extensive views over the surrounding area. There are communal grounds comprising lawns and flower borders etc.

18 The remaining Blocks are as follows:

Pasteur House: A new build Block comprising 32 Flats. There are 3 communal areas.

Jenner House: A new build Block comprising 21 Flats with 2 communal areas.

Franklin House: A new build Block comprising 11 Flats which there is one communal area. Because of the topography of the site this House is approached by a wooden bridge over ground that falls away.

Lister House: A new build Block comprising 32 Flats. 5 of the properties at Lister House have their own entrance and do not share the communal areas, of which there are 3 in the main Block.

Fleming House: A new build Block comprising 17 Flats with 2 communal areas.

The Leases

19 The Tribunal assumes that all of the Leases for the Flats are identical except for essential differences as to the identity of the Lessee and because of the differing service charge proportions applicable to the Blocks. The term is 999 years from 1st October 2002 at an initial ground rent of £125, which is subject to review every 25 years of the term. The Lessor is David Wilson Homes Limited and the First Respondent, Holding and Management (Solitaire) Limited, is made a party to the Leases and is termed 'the Company' in each Lease. The Leases also recite that it was the intention that the freehold of City Heights was to be transferred to the First Respondent once all of the Leases were granted. This has taken place, so the First Respondent is now the freeholder and the lessor under the Leases.

20 The scheme of the Leases as they relate to the service charges is that each year there is to be a computation of the Annual Maintenance Provision for the Block and the Estate. This is to be provided 'not later than the beginning of March' immediately preceding the beginning of the Maintenance Year, which is stated in the Leases to be the year ending on the 1st April. In practice the Maintenance Year is 1st April to 31st March. The Maintenance Provision, which is essentially an estimate of the service charge costs for the forthcoming Maintenance Year, is to be paid in two equal instalments. After the end of each Maintenance Year the Company is to determine the 'Maintenance Adjustment' which is the amount by which the actual service charge either exceeds or is less than the Maintenance Provision. In the former case the amount of the Maintenance Adjustment is credited to the Leaseholder, in the latter case he must pay it on demand.

21 In general the flats in each Block pay a pre-determined proportion of the costs applicable to the Block as listed in paragraph 18 above. The Leases provide that a separate charge is to be made for the 'Estate' based upon the fraction of 1/169. In practice the Accounts for each year are prepared on a Block by Block basis, but one of the elements is shown as 'Contribution to Common services'. The sum shown under this heading is a proportion of the costs for maintaining the common areas in the whole estate which are shared by all leaseholders, but taking into account the number of flats in each Block, so that each Leaseholder pays through the service charge account for his Block the correct proportion of the Estate Charge.

22 The Fifth Schedule to the Leases sets out the purposes for which the service charge is to be applied. The list is extensive but the following paragraphs were highlighted by the Second Respondent as providing authority for incurring of costs relating to the service charges under challenge.

Part 1 - Services attributable to the Block

To employ staff

4. Unless prevented by any cause beyond the control of the Company to employ such staff to perform such services as the Company shall think necessary in or about the Block but so that the Company shall not be liable to the Lessee for any act default or omission of such staff

Payment of costs incurred in management

5. To make provision for the payment of costs and expenses incurred by the Company
(a) in the running and management of the Block and the costs and expenses (including Solicitors costs) incurred in the collection of rents and service charges in respect of the flats in the Block and in the enforcement of the covenants and conditions and regulations contained in the leases granted of the flats and parking spaces in the Block and

(b) in making such applications and representations and taking such action as the Company shall reasonably think necessary in respect of any notice or order or proposal for a notice or order served under any statute order regulation or bye-law on the Lessee or on any underlessee of the Flat Carport or Parking Space or on any lessee or underlessee of any other flats and parking spaces in the Block or on the Company in respect of the Block or the curtilage thereof or all or any of the flats and parking spaces therein and

(c) in the determination of the Company's remuneration referred to in paragraph 2 (iii) of Part 11 of the Fourth Schedule

(d) in the preparation and audit of the Service Charge Accounts

(e) in the payment of the costs fees and expenses paid to any Managing Agent appointed by the Company

Other services and expenses

14 *To carry out all repairs to any other part of the Block for which the Company may be liable and to provide and supply such other services for the benefit of the Lessee and other tenants of the flats in the Block and to carry out such other repairs and improvements works additions and defray such other costs (including the modernisation or replacement of plant and machinery) as the Company shall consider necessary to maintain the Block as a block of good class residential flats or otherwise desirable in the general interest of the lessees of the Block*

Part 11 - services attributable to the Estate

Maintenance of the Grounds

1 *(a) Properly to cultivate and preserve in good order and condition the communal garden areas comprised in the Estate*

(b) To keep the entrance gates and the common accessways road and footpaths and all parking spaces carports fences screens walls and communal bin store comprised in the Estate properly repaired maintained and surfaced and (where appropriate) lighted

To employ staff

3 *Unless prevented by any cause beyond the control of the Company to employ such staff to perform such services as the Company shall think necessary in or about the Estate but so that that the Company shall not be responsible to the Lessee for any act default or omission of such staff*

Payment of costs incurred in the management of the Estate

4 *To make provision for the payment of all costs and expenses incurred by the Company:-*

(a) in the running and management of the Estate and the costs and expenses (including Solicitors costs) incurred in the collection of service charges in respect of the Estate and in the enforcement of the covenants and conditions and regulations contained in the leases granted of the flats and parking spaces in the Estate

(b) in making such applications and representations and taking such action as the Company shall reasonably think necessary in respect of any notice or order served under any statute order regulation or bye-law on the Lessee or on any underlessee of the Property or on any lessee or underlessee of any other property on the Estate or on the Company in respect of the Estate in respect of any or all of the parking spaces comprises in the Estate and

(c) in the determination of the Company's remuneration referred to in paragraph 2 (iii) of Part 11 of the Fourth Schedule

Other Services and Expenses

7 *To carry out all repairs to any part of the Estate for which the Company may be liable and to provide and supply such other services in relation to the Estate for the benefit of the Lessee and other tenants of properties on the Estate and to carry out such other improvements works and additions and defray such other costs (including the modernisation or replacement of plant and machinery) as the Company shall consider necessary to maintain the Estate as desirable in the general interest of the lessees of the properties on the Estate*

The relevant law

23 Section 27A (1) of the Act provides that application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date by which it is payable and the manner in which it is payable. The subsection applies whether or not a payment has been made.

24 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs.

25 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where they are incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is to be limited accordingly.

26 Although there are two Respondents who are separately represented and who are not in agreement between themselves as to the professional fees, the Tribunal is required by the Application and by section 27A of the Act to make a determination as to whether the service charges are payable and if so by whom and to whom, and the amount which is payable in respect of them.

27 As to the question of by whom the service charges are payable, it is clear that this is the Applicant. The First Respondent is the freeholder and also nominated as 'the Company' in the Leases. There can be no doubt that the person to whom the service charges is payable, for the purposes of section 27A of the Act, is the First Respondent. The position of the Second Respondent is that it was appointed, following a consultation procedure, to be the managing agent on behalf of the First Respondent. As a matter of law, therefore, the First Respondent is bound by the actions of the Second Respondent. The position of the Second Respondent as regards the proceedings is that it was (against its will) joined into the proceedings by the Tribunal at the request of the First Respondent, because the Tribunal accepted the submissions of the First Respondent that it was not in possession of the necessary documents or factual knowledge to properly respond to the Application. However, the only contractual relationship that matters for the purpose of the Application is that existing between the First Respondent as landlord, and the Applicant as tenant. Any adjustments to the service charges made by the Tribunal are enforceable

only against the First Respondent. The Tribunal has no jurisdiction to adjudicate upon the liabilities of the First Respondent as against the Second Respondent in respect of any such adjustments, or vice versa.

Submissions and Hearing

28 The Tribunal received written submissions from the parties in accordance with the Directions, and a Scott Schedule was provided by the Applicant. The Scott Schedule containing the brief submissions of the parties and the Tribunal's determinations appears in this Decision at paragraph 85. However there are a number of issues arising in respect of which a fuller discussion is required than that which can be contained in the Scott Schedule, and these are dealt with in the paragraphs following. At the Hearing, the Applicant was represented by Mr Neil Healey of MPM Limited. This company is now the manager at City Heights, having been appointed by City heights RTM Company Limited following the acquisition of the Right to Manage on 1st January 2011. The First Respondent was represented by Ms Lindsay King de Lagrutta, a solicitor employed by Estates and Management limited, and the Second Respondent by Ms Amanda Gourlay of counsel. Also present throughout were Mr Max, a Director of the Second Respondent, representatives from Bradys, the solicitors for the Second Respondent and Mr Chapman of Lincoln and Chapman. Additionally evidence was heard from the following witnesses:

Mr Doherty (Estates and Management Limited)
Mr Millar (Hawthorne Estates)
Mr Furness (concierge)
Mr Press (leaseholder at City Heights)

Professional Fees

29 It became apparent during the Hearing that, within the Accounts for the period which were prepared by Lincoln Chapman and Co Limited (the accountants employed by the Second Respondent), there are large amounts shown under the headings 'professional fees', which had not been included in the estimate for the year. Professional fees, it transpired, included accounts totalling £11, 752.50 from Lincoln Chapman in respect of accountancy fees, and from the Second Respondent for work relating to the accounts. The Invoices are listed below:

Date	**Number in Bundle**	**Issuer**	**Amount**
21.04.2011 (not disputed)	109	Lincoln Chapman	£780
All the following are disputed			
06.04.2011		Lincoln Chapman	£3,193.87
06.04.2011	110	Lincoln Chapman	£1,064.63
31.05.2011	111	Lincoln Chapman	£450
09.09.2011	112	Lincoln Chapman	£450
24.08.2011	113	Lincoln Chapman	£2,340
30.06.2011	114	Lincoln Chapman	£738
24.08.2011	26	CHC-Land	£864
24.08.2011	27	CHC-Land	£672
24.08.2011	28	CHC-Land	£1,200
Total disputed			**£10,972.50**

30 In the first two days of the Hearing, Mr Chapman (of Lincoln Chapman) explained that, as far as he was concerned, the accounts handed over by the First Respondent were inadequate. In fact he used the term 'meaningless rubbish'. He was not prepared to accept the opening positions as disclosed by those accounts. As his name was going on the accounts for the 2010/11 period he needed to be completely sure they were accurate, and it was impossible to achieve this result without a great deal of work. There were many meetings, telephone conversations and correspondences with the accounts department of the First Respondent.

31 To assist the Tribunal, Mr Chapman provided copies of the five disputed invoices, with emails attached to them that give an indication of the pressure he was under and the volume of work that had to be done. The rate charged by Mr Chapman was £75 per hour throughout. Although Mr Healey objects to the totals of the bills, he did not challenge the hourly rate, or suggest that the time was not spent.

32 It also became apparent at the Hearing that some of the urgency arose because of, and that some of the work that was done by Mr Chapman related to, an application which had been made by Mr Healey on behalf of City Heights RTM Company Limited under section 94 of the Commonhold and Leasehold Reform Act 2002 for a determination by the Leasehold Valuation Tribunal (as the Tribunal was then termed) of the amount of the uncommitted service charges to be handed over at the acquisition of the Right to Manage on 1st January 2011. It was suggested that the speed with which this application was made (during January 2011) was a contributory factor to the amount of the costs.

33 Mr Healey, for the Applicant, accepted that a 'normal' accountancy fee is payable. In the Accounts for the period the following charges for each House were made, all of which are accepted as reasonable by the Applicants:

Nightingale House:	£1,384.21
Fleming House:	£353.64
Lister House:	£399.37
Franklin House:	£270.96
Jenner House:	£265.72
Pasteur House:	£380.62
Total:	£3,054.52

In addition, the Applicant accepts the sum of £780 (invoice 109) as a reasonable charge in respect of the 'Estate'. Accordingly, the amount disputed in respect of the Accountancy fees is the sum of £10,972.50. This is made up of the accounts shown in the table in paragraph 27 above.

34 Arising from the evidence of Mr Chapman during the first two days of the Hearing in August 2014, Ms Gourlay, for the Second Respondent suggested that, as it appeared that the works charged for in the disputed accounts arose because of failures by the First Respondent to properly prepare the service charge accounts, a situation arises that is analogous to the concept of 'historic neglect' as established by the case of *Continental Property Ventures Inc. v White* [2007] 1 EGLR 86 (LT). In this case, HH Judge Rich QC found that the Landlord's failure to timeously repair the property in question meant that greater costs were incurred than would otherwise have been the case. The costs actually

incurred were reasonable for the purposes of the claim under section 27A of the Act, because they needed to be done, but the leaseholders were entitled to damages equivalent to the corresponding increase in the service charge contribution. Ms Gourlay suggested that the Tribunal might find the disputed accounts as reasonably incurred for the purposes of section 19 of the Act, because the work had to be done, but as the necessity arose because of failings by the First Respondent with regard to the service charge accounts, the Tribunal could award damages to the Applicant under the principal of historic neglect, to be paid by the First Respondent.

35 In view of the fact that the above submissions had not been raised previously, and that Ms King de Lagrutta would need to take instructions in respect of the suggestion of 'historic neglect,' the Tribunal ordered that the parties each prepare written submissions upon the matters raised relating to the disputed accounts prior to the reconvening of the Hearing. These submissions, and the oral submissions made by the three parties at the resumed Hearing in October 2014, are contained in the paragraphs that follow.

36 At the reconvened Hearing in October 2014, evidence was heard from Mr Sean Doherty, who is employed as an accountant by OM Property Management Limited. Mr Doherty had also provided a witness statement as part of the First Respondent's written submissions. Mr Doherty's evidence is that from 2009 he has been involved with City Heights, including the time when Solitaire Property Management Company Limited ('SPM') was the managing agent, and at that time also within the Peverel Group of companies. Mr Doherty was responsible for the preparation of the Accounts for the periods ending on 31st March 2009 and 2010. At the time of the commencement of the appointment of the Second Respondent as managing agent from 1st April 2010, Mr Doherty provided the Second Respondent with the billing addresses for each of the leaseholders together with the service charge percentage apportionment matrix, along with the 2008 year end accounts. Mr Doherty also explained that following an LVT Decision in February 2010 in respect of the service charges for several years up to and including the 2008 year end (and a further Decision which was supplemental to it) a vast amount of adjustments to individual leaseholder accounts had had to be made. Adjustments also had to be made to post 2008 accounts because OM wanted to apply the 2010 Decision going forward.

37 Mr Doherty completely refuted the suggestion that the accounts he had prepared 'did not add up' or were 'meaningless rubbish'. It is accepted that the accounts for the 2009 year end were not provided until August 2010 (they are signed and dated by Websters, the then accountants and auditors for City Heights, on 22nd July 2010), and that the accounts for the 2010 year end were held up (because of negotiations with Mr Healey). However, they were finally provided, certified by the auditors, in April 2011.

38 Mr Doherty referred to Mr Chapman's difficulties, and suggested that these were caused by trying to prepare accounts for 31st December 2010 before the March 2010 year end accounts were ready. This is was no doubt because of the section 94 Application. The RICS guidelines were followed with regard to the production of the accounts. There is no similar guideline for the handover to a RTM Company. However, SPM has a procedure for such instances by providing the new managing agents with plot details and billing addresses, so that it can commence collecting the service charge instalments. In the opinion of Mr Doherty, the information provided to the Second Respondent in April 2010 was adequate for it to commence management. Mr Doherty also confirmed that a

debtors list was sent to Mr Max in September 2010, after the finalisation of the 2009 accounts, to allow for the necessary leaseholder adjustments.

39 Between October 2010 and April 2011, there were a huge number of emails and queries from the Second Respondent to SPM relating mainly to individual leaseholder accounts. The negotiations with Mr Healey related to the very many adjustments to the 2010 year end accounts following the 2010 LVT Decision. SPM were keen to ensure that these were agreed with Mr Healey and his colleague Mr Press prior to the production of these accounts. Although this caused an inevitable delay, SPM provided as much information as possible to the Second Respondent as soon as it was able.

40 The year end accounts for 2010 were signed by John Needham and Co (Auditors) on 26th April 2011. The total accountancy fees charged during the service charge year were £3,490.08, including the in-house accountancy charges and those of the auditor. This is the normal amount Mr Doherty would expect for a scheme of this nature. Following the production of these accounts a meeting took place between Mr Doherty, Richard Sandler of Estates and Management Limited, Mr Max and Mr Chapman at the offices of SPM in the week commencing 20th June 2011. Following this meeting the accounts department of SPM produced the closing statement which disclosed a figure (for the RTM handover) of £15,680.73. This amount was paid over to the RTM Company on 14th September 2011.

41 The above shows that the Second Respondent was in agreement with the year end figures in the accounts and the closing position statement and that any queries were agreed by that date. Mr Doherty concluded therefore that the accountancy was handled properly and in a professional matter and the suggestion that there has been a breach of the covenant in the Leases relating to the keeping of the service charge accounts is unfounded.

42 Finally, Mr Doherty suggested that the high level of fees incurred arises because of the following:

(a) The Second Respondent had no in-house accountancy expertises to deal with tenant debt and the legacy issues involved.

(b) The Second Respondent is inexperienced for a scheme of this size.

(c) The Second Respondent was dealing with accounting matters before the provision of the 2010 year end accounts.

(d) The effect of the 'premature' section 94 Application.

43 On being questioned by the Tribunal, Mr Doherty confirmed that his company regarded the costs of the implementation of a tribunal decision is an in-house matter which would not be charged to the service charge. Similarly, costs associated with a section 94 Application would not be regarded as service charge items.

44 The First Respondent provided the following table which contains a list of the invoices with the comments of the First Respondent.

Date	Number	First Respondent's Comment
21.04.2011 Lincoln Chapman	109 £780	Not disputed
06.04.2011 Lincoln Chapman	108 £3,193.87	This and 110 Relates to preparation and reconciliation of 165 Property Accounts. 75% Legacy 25% current. The closing provision for the s 94 Application had not been provided but it was on foot. Fees appear to relate to work done to comply with Tribunal deadlines without the benefit of the finalised year end accounts for y/e 2010.
06.04.2011 Lincoln Chapman	110 £1,064.63	See above
31.05.2011 Lincoln Chapman	111 £450	This relates to 2 hour telephone conversation in preparation and 3 hours attendance of Tribunal Hearing at £75 per hour. There is no section 20C preventing recovery of these costs which should therefore be recoverable.
09.09.2011 Lincoln Chapman	112 £450	This relates to 5 hours at £75 per hour 'final adjustments as per Mr Healey's requirement in relation to the year end accounts. These are recoverable.
24.08.2011 Lincoln Chapman	113 £2,340	This relates to 26 hours at £75 per hour in relation to LVT accounts. The date shows it is after the final accounts and closing position shown by previous managers. Recoverable in principal as part of the cost of producing year end accounts. There is a note regarding sorting out the opening position and finalising.
30.06.2011 Lincoln Chapman	114 £738	Marked 'attending meeting with Richard Sandler and Sean Doherty 7 hours at £75 per hour plus travel 200 miles at 45p per mile'. Its date indicates that it was in connection with queries relating to the 2010 accounts and is in principal recoverable.
24.08.2011 CHC-Land	26 £864	Recoverable in principal under Paragraph 5 of Fifth Schedule to Lease.
24.08.2011 CHC-Land	27 £672	Recoverable in principal under Paragraph 5 of Fifth Schedule to Lease.
24.08.2011 CHC-Land	28 £1,200	Recoverable in principal under Paragraph 5 of Fifth Schedule to Lease.

45 Arising from the evidence of Mr Chapman and Mr Max it became apparent that the accounting software operated by the Second Respondent is the use of Excel spreadsheets. Mr Healey argued strongly that this is not an appropriate accounting software package. Mr Healey currently manages City Heights through his company MPM Limited, and submitted that if the Sage accounting package had been used, the costs would have been far less. This is because, the property manager can, using Sage, effectively provide to the Accountant all of the information required for the completion of the accounts. The Second Respondent was using Excel Spreadsheets only, and with no in-house accounting expertise, this meant that Mr Chapman had to go back to basics to obtain the necessary information to prepare the accounts. Mr Chapman disagreed with this. He said that, for his purposes, the Excel spreadsheets were appropriate, and that the advantages of the Sage package are overrated.

46 It is also clear that there was a suggestion, at least, that the First Respondent may have been prepared to reach an agreement with the Second Respondent to meet a proportion of the accountancy fees. Within the bundles is an email from Mr Richard Sandler to Mr Max on 31st May 2011 which reads as follows:

'Nick,
I have now recalled the papers from Dickinson Dees and will be dealing with the matter in-house for the time being. We have to distinguish between costs incurred in producing the final account from you and costs incurred in recording what is due to Peverel, the former can be charged to the service charge, the latter cannot.

At this stage I need to have your fees and those of Mr Chapman for the latter. Going forward I wish to instruct Mr Chapman to examine the set of accounts produced by Peverel and raise whatever queries on them that he sees fit.

We will then arrange to meet Sean Doherty together with his manager to discuss these.

We will not be looking into Peverel's current financial position as part of this exercise. I wish to move ahead with this as quickly as possible as, of course, the 2010 accounts have not been issued and need to be done asap. I don't have Mr Chapman's details so could you forward this email to him in order that you both may respond to me. In addition could you both give me some dates, possibly next week, when you would be available for a preliminary meeting with me in Nottingham.'

Ms King de Lagrutta said that attempts had been made to contact Mr Sandler to obtain clarification relating to the matter. However, Mr Sandler has now retired and is unable to assist. Ms King de Lagrutta said that she was in the Tribunal's hands over the matter, but is clear that no concluded agreement was reached. However, she also said that the Second Respondent has not provided any breakdown of the fees, and does not know why the Second Respondent has chosen to put all of the accountancy fees into the service charge rather than approaching the First Respondent to agree an amount.

47 As part of her closing remarks Ms Gourlay said that argument as to historic neglect might now be of less force, following the evidence from Mr Doherty. However, it remains the position of the Second Respondent that all of the work carried out by Mr Chapman and the Second Respondent was necessary. The work had to be done and the amounts charged are reasonable. It was submitted

that paragraph 5 (a) of Part 1 to the Fifth Schedule to the Lease provides authority for all of the costs to be included in the service charges.

48 Mr Healy in closing said that, whether the issue of historic neglect was relevant or not, the position of the leaseholders is that whilst it is of course reasonable that accountancy fees relating to the preparation of the service charge accounts are charged to the service charge account, the amount for the year in question is far in excess of any amount that can be considered reasonable. The amount agreed by the Applicant is over £3,800, whereas the total amount the Respondents seek to charge comes to £14,915. There is no way that this can be reasonable.

49 The management is carried out now by MPM Limited, and the accountancy charges are £840. This is achieved because by proper use of the Sage software system, the manager can present the accountant with accurate figures. It is the property manager's job to do this anyway. An accountant should not need to be employed to do all of the basic work, as appears to have happened in the present case. As Mr Doherty points out in his witness statement, Mr Max was out of his depth.

Decision with regard to the professional fees

50 Having heard the evidence of Mr Doherty, the Tribunal does not find that the additional professional fees arise from historic neglect, and accordingly does not need to consider whether an award of damages should be made under the principal established by *Continental property Ventures v White*, as originally suggested by Ms Gourlay.

51 The Tribunal notes that none of the parties have provided a comprehensive breakdown of the disputed invoices, to separate exactly what it is claimed are directly related to the production of the service charge accounts, and what relate to the other matters, including the accountancy and management charges that relate to the section 94 (of the 2002 Act) application and proceedings. However, it is clear to the Tribunal, from a perusal of the invoices and the copy emails helpfully supplied by Mr Chapman and from the evidence presented at the Hearing that a considerable amount of the additional work arose as a result of the section 94 Application.

52 The question therefore arises as to whether the service charge provisions of the Leases are sufficiently widely drawn to include costs incurred by the landlord in preparing for the section 94 hearing. The position of both of the Respondents is that paragraph 5 of the Lease provides the necessary authority. The costs are either part of the costs of 'running and management' (Paragraph 5 (a)) or they are incurred in the 'preparation and audit of service charge accounts' (paragraph 5 (d)).

53 The Tribunal does not accept that the extraordinary costs incurred by the First Respondent associated with the RTM acquisition are provided for in the paragraphs relied upon. They arise from exceptional circumstances, and the Tribunal does not consider that the reasonable person, with the background knowledge available at the time the lease was entered into, would have considered that 'running and management' meant any more than the normal tasks associated with managing a large development such as City Heights, and did not envisage that the costs involved with the ascertaining and transfer of uncommitted service charge funds to a RTM Company would be within the

provision. The position is at best ambiguous, and it is well established that ambiguity must be resolved in favour of the lessee, under the *contra proferentem* rule.

54 Neither does the Tribunal consider that paragraph 5 (d) of Schedule 5 is of assistance to the Respondents. The Lessor's responsibility for the provision of service charge accounts is contained in paragraph 5 of Part 11 of the Fourth Schedule to the Lease:

> '5. *The Company shall arrange for accounts for the Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Lessee a summary of such accounts.*'

The Tribunal finds that, when considered with paragraph 5 (d) of the Fifth Schedule, one annual service charge account is required, and it is not possible to apply paragraph 5 (d) to the preparation of a document (i.e. the statement of uncommitted service charge funds for the RTM handover) that is additional to such requirement.

55 The Tribunal also notes that, despite what is said by the First Respondent now, it would appear that Mr Sandler of Estates and Management considered the above to be the case as evidenced by the email of 31st May 2011.

56 Of course, paragraph 5 (d) clearly does apply to those parts of the disputed invoices that relate directly to the preparation of the 2011 service charge accounts and includes costs associated with the adjustments to the accounts following the February 2010 LVT decision. However, the Tribunal does not find that the following categories of costs, which would otherwise be allowable, are reasonably incurred for the purposes of section 19 of the Act:

(1) Costs occasioned as a consequence of the change of managing agents. The Tribunal considers that in general costs relating to the new agent's familiarisation with the accounts should not be charged against the service charge account.

(2) Costs charged by Mr Chapman which would not have been payable had the Second Respondent had the relevant experience and operated a suitable accountancy package. In this regard the Tribunal agrees with Mr Doherty's and Mr Healey's comments. It also agrees with Mr Healey that part of the property manager's job is to be able to present the accountant with accurate figures and in a form which minimises external audit and accountancy costs.

(3) Costs attributable to adjustments to the accounts following the 2010 LVT Decision. It is not reasonable that the leaseholders should be required to pay through the service charge for implementing a tribunal decision in their favour.

57 Even if the Tribunal's interpretation of the lease provisions relating to the section 94 work is wrong, and it were to be found that the lease does authorise the charges in principal, the Tribunal would have disallowed (as not reasonably incurred for the purposes of section 19 of the Act) the additional costs arising from the apparently frantic efforts to meet the 'LVT deadline'. Mr Doherty's evidence, which the Tribunal accepts, is that much of the costs were occasioned by Mr Chapman trying to produce a set of accounts, or at least a 'closing position' for the section 94 LVT proceedings without the benefit of the final

service charge accounts for the 2010 year end. These were themselves held up because of the many adjustments which had to be made following the February 2010 service charge decision, which had to be agreed with Mr Healey. It is clearly sensible that no attempt is made to prepare accounts for a period in advance of the final accounts being available for the preceding period. However, there is no evidence that any thought was given to applying to the LVT for an adjournment until the 2010 year end accounts were available. Had an application for an adjournment been made and turned down, it might have been a different matter, but without such an application it is not reasonable that the leaseholders should be saddled with these additional costs.

58 The Tribunal was also initially of the opinion that, had the Respondents applied the decision in *OM Limited v New River Head RTM Co Ltd. [2010] UKUT 394 (LC)*, in which the Upper Tribunal determined that the calculation of the uncommitted service charges required to be handed over to the RTM Company at the acquisition date was a relatively simple cash statement, the costs would have been substantially less. However, following submissions from the parties invited by the Tribunal after the Hearing, the Tribunal accepts the arguments of both Respondents that the work that was being done by Mr Chapman was a necessary prerequisite to the opening position for such a cash flow statement. Until the individual service charge accounts of every leaseholder had been accurately established the Second Respondent could not be confident that it would not either hand to the RTM Company moneys which it needed to retain to satisfy accrued liabilities, or, on the other hand, retain moneys that ought to be handed to the RTM Company.

59 However, it is clear from the submissions received that the bulk of the work arose as a result of the implementation of the 2010 LVT Decision. The Tribunal has already made it clear that none of the costs associated with this operation are reasonably incurred, even if they are permitted under the lease, and accordingly the additional costs would not in any case have been allowed.

60 The Tribunal considers that that following matters are relevant to its decision as to what costs arising from the accounts comprising the professional fees, are reasonably incurred:

(1) Mr Doherty's evidence that, when the First Respondent manages properties itself, or through one of its associated companies, costs arising from the RTM process, including the preparation of the statement of uncommitted service charges, are normally regarded as in-house costs and are not charged through the service charge.

(2) In the First Respondent's written submissions dated 1st October 2014, at paragraph 24 the First Respondent says the following:

> *'24. The First Respondent does accept that there may have been an agreement by the First Respondent to meet a proportion of the accountancy fees according to the email dated 31stMay 2011. The First Respondent does not have enough information from the Second Respondent to assess the costs which fall into this category because the Second Respondent has not provided the analysis. The First Respondent cannot understand or explain why the Second Respondent put all these accountancy fees through the service charge rather than approach the First Respondent to agree the amount to be funded at that time.'*

(3) In the same submissions, paragraph 28:

'*28. If the Second Respondent cannot produce better information then the First Respondent can only rely on the Tribunal to determine the amount of any excess and this will become an issue between the First Respondent and the Second Respondent and may be the subject of separate proceedings as it appears that there has been some negligent management in relation to these fees.*'

(4) The Tribunal finds that there was pressure from the leaseholders' representative, Mr Healey, to hurry things along, and this, coupled with the time frame within which the following occurred contributed to the amount of work. The time frame is as follows:

10th February 2010	Principal LVT Determination
1st April 2010	CHC-Land Ltd commence management
26th February 2010	Supplemental LVT Determination
21st May 2010	RTM Claim Notice
1st January 2011	Acquisition of RTM
11th January 2011	Section 94 Application

61 The Tribunal's decision with regard to the professional fees, applying its findings and taking into account the matters referred to above, is contained in the Table below:

Date	**Number**	**The Tribunal's Decision**	**Allowed**
06.04.2011 Lincoln Chapman	108 £3,193.87	This and 110 are disallowed as both invoices relate to work on the reconciliation of the property accounts prior to the 2011 year end. Insofar as this relates to section 94 matters it is not recoverable under the lease and insofar as it relates to other matters arising from the 2010 LVT decision or the earlier accounting periods the Tribunal finds that none of this work is reasonably incurred.	Nil
06.04.2011 Lincoln Chapman	110 £1,064.63	See above	Nil
31.05.2011 Lincoln Chapman	111 £450	This relates to the LVT hearing and is disallowed as not recoverable under the Lease. However, even if it were recoverable within the Lease terms the Tribunal would disallow it as not reasonably incurred.	Nil

09.09.2011 Lincoln Chapman	112 £450	This relates to 5 hours at £75 per hour 'final adjustments as per Mr Healey's requirement in relation to the year end accounts'. The Tribunal finds that this account is reasonable and is therefore allowed.	£450
24.08.2011 Lincoln Chapman	113 £2,340	This is 26 hours at £75 per hour in relation to LVT accounts. This clearly relates to the final accounts, but the Tribunal finds that the amount is excessive. It is not suggested that the hours were not put in by Mr Chapman, but the Tribunal finds that only half of the amount of this account is reasonably incurred.	£1,170
30.06.2011 Lincoln Chapman	114 £738	This relates to the meeting with Mr Sandler and Mr Doherty arising out if which the email exchange leading to the email of 31st May 2013. The Tribunal finds that none of this is account is reasonably incurred.	Nil
24.08.2011 CHC-Land	26 £864	The Tribunal does not allow these additional charges as the management charge is for all matters relating to management. There is no justification for another charge in relation to the discussions with the accountant and/or the First Respondent. This is not reasonably incurred.	Nil
24.08.2011 CHC-Land	27 £672	As above.	Nil
24.08.2011 CHC-Land	28 £1,200	This is an additional debt collection charge, above the £4000 plus VAT per annum contained in the Second Respondent's tender. Account 28 is disallowed as an additional management charge which is not reasonably incurred.	Nil
TOTAL			£1,620

62 The decision of the Tribunal therefore is that out of the total disputed professional fees amounting to £10,972.50, the sum of £1,620 is reasonably incurred and allowed, and the remainder is disallowed.

Insurance

63 The Accounts for the 2011 year end disclose that the insurance total for the year amounted to £32,804.95, made up as follows:

Nightingale House:	10,882.08
Fleming House:	3,058.89
Lister House:	6,359.51

Franklin House:	1,985.17
Jenner House:	3,694.70
Pasteur House:	6,824.60
	32, 804.95

64 Ms King de Lagrutta did her best to investigate the position, which was complicated by the fact that the Second Respondent erroneously sent the insurance premiums to Estates and Management Limited. The records show that, following the cancellation of the insurance with effect from 1st January 2011, there was a balance due of £32,476.57. However, for reasons which she was unable to explain, an amount of £32,995.93 was actually paid by Estates and Management Limited to Oval. This leaves a discrepancy of £519.36. However, the accounts show that £32,804.95 was paid by the leaseholders through the service charge. There is therefore a difference between the amount stated to be owing and the amount shown in the accounts of £328.38.

65 Despite the best efforts of the First Respondent, it is unable to explain this difference. Mrs King de Lagrutta invited the Tribunal to find on the balance of probabilities that the amount shown in the accounts is the correct figure, but ultimately left the matter in the hands of the Tribunal.

66 The Applicant had originally maintained in the Scott Schedule that because the acquisition of the Right to manage on 1st January 2011 frustrated the insurance policies arranged by the First Respondent, there ought to be a refund to the leaseholders from Zurich, with whom the insurance had been placed. Eventually, Mr Healey accepted that there was no refund due. Having heard what Mrs King de Lagrutta said with regard to the discrepancy, however, Mr Healey's position was that unless this amount could be supported by an invoice or other credible evidence, it should not be allowed.

67 The Tribunal agrees with Mr Healey that, without documentary evidence, the discrepancy cannot be allowed, and accordingly the Tribunal finds the amount of the service charge in respect of Insurance to be £32,476.57 in total.

Management Charges

68 Within the accounts are invoices which contain amounts in respect of general management of £6,750 per quarter plus VAT. The Applicant does not dispute these amounts. However, within the three invoices (16, 22 and 23) are additional amounts of, in the case of invoices 16 and 23, £1,000 plus VAT for service charge debt collection, and in respect of invoice 22 for £2,000 plus VAT for this item. Invoice 22 covers the period from 1st October 2010 to 31st December 2010, when the Second Respondent's management ceased. Invoice 22 contains the following narrative:

'Please note that the 3rd and 4th instalment of the debt collection fee are being charged in this invoice because the debt collection function for the whole of 2010 - 2011 will complete in this period despite the management function being ceased to RTM on 31st December 2010.'

69 Mr Healey disputed the additional debt collection charges, saying they are unreasonable. It is the manager's job to deal with debt collection as part of its management fee, and there should not be an additional amount charged. Ms Gourlay brought to the Tribunal's attention the Tender Document, as a result of which the Second Respondent was awarded the management contract. This

document records that the tender was for £27,000 per annum general service charges, £4,000 service charge collection, and an additional £1,500 as a 'debt collection allowance'. Ms Gourlay said that the tender was competitive, and in the absence of market evidence that the total amount, excluding the debt collection allowance, of £31,000 was excessive, the Tribunal should find it to be reasonably incurred.

70 The Tribunal notes that the management charge minus the collection charge equates to an amount of approximately £150 per flat before VAT, and that £4,000 represents a further £24.25 per flat. The Tribunal agrees with Mr Healey that in principal a fee for management should encompass the collection of the service charge. However, in the present case it is clear that the management fees were arrived at as the result of a competitive tender, although the alternative tenders were not put before the Tribunal. Nevertheless, the Tribunal finds in the present case that the overall amount of approximately £175 per flat, as well as being arrived at as the result of the tender, is within a band of charges the Tribunal would consider reasonable. Accordingly the Tribunal allows the management charge in full, with the exception of the fourth instalment of the £4,000 collection charge, which falls outside of the management period.

71 Accordingly, the Tribunal's determination is that the management charges for the nine month period are £23,250 plus VAT (£27,318.75).

Cleaning and Gardening

72 There are invoices from CHC-Land for Cleaning and from Hawthorne Estates in respect of the gardening, although the contractor in both cases was Hawthorne Estates. The two items were charged for differently in the accounts, that for Cleaning as a charge from the Second Respondent, and that for the gardening as accounts from Hawthorne Estates. However, the services were essentially both provided by Hawthorne Estates. Mr Healey, relying on the witness statement of Mr Russell Blagg, maintained that the evidence from Mr Blagg and other residents is that no cleaning or gardening was carried out until June 2010, and therefore the invoices for this period must be false. In the event, Mr Blagg was unable, through work commitments, from giving evidence directly.

73 The Second Respondent's witness, Mr Millar of Hawthorne Estates gave evidence on the first day of the Hearing. He was able to produce the time sheets from his employees for the gardening and the cleaning and explained that he attended on site personally on more than one occasion. He was able to show that on 20th April 2010 two persons had attended, and that on 19th May 2011 the gardening team left Manchester at 6.00 a.m. and arrived on site at 8.30 a.m. and left at 6.45 p.m. On 25th May, Mr Millar returned to the site at his own expense because the ride-on machine had broken down and he needed to finish the job.

74 Mr Press, who lives at City Heights, in the one property which is a house, said that he had not seen contractors on site and did not think any work was done during this period. However, as he does not work from home, he could not state categorically that no one attended on behalf of the contractors.

75 In view of the perceptions of Mr Press and Mr Blagg, there must be a question mark over the effectiveness, or the adequacy of the number of visits for the cleaning and gardening during the period from April to June 2010. However, as Mr Blagg was not able to give direct evidence, and Mr Press was only able to

testify as to an impression, the evidence of the Applicant on this point is not as strong as that of the Second Respondent. The Tribunal considered Mr Millar to be a credible witness, and the time sheets which he produced along with his own oral evidence satisfied the Tribunal that the contractors did attend during this period as submitted by the Second Respondent. Accordingly, the Tribunal finds that the disputed invoices for gardening and cleaning during the period April to June are reasonably incurred and payable by the Applicant.

Concierge Services

76 There are invoices from Hawthorne Estates relating to the provision of concierge services totalling £11,064.92. The invoices numbers are listed in the Scott Schedule. The Applicant submits that the Lease does not authorise the employment of a concierge, but even if it does, the concierge's main duties seem to include the collection of parcels for the individual occupiers of the flats at City Heights and the testing of the fire alarms etc. Mr Healey said that the parcel collection service, which is effectively for the subtenants of the leaseholders, in view of the high proportion of 'buy to let' leaseholders, is not a proper use of service charge funds.

77 The Applicant also maintains (in similar vein to the allegations concerning the gardening and cleaning) that in any case Mr Furness did not start on site until June 2010, and therefore the invoices dated 3rd May 2010 (55) and 2nd June 2010 (56), are not genuine.

78 The position of the Second Respondent is that the lease does permit the employment of a concierge. The provisions of paragraph 4 in Part 1 of the Fifth Schedule (relating to the Block) and the parallel provisions in paragraph 3 of Part 11 of the Fifth Schedule (relating the Estate) clearly authorise the employment of staff by the Company and the provisions of 14 of Part 1 of the Fifth Schedule (and the similar provision in paragraph 3 of Part 11) authorise the Company to *'...supply such other services for the benefit of the Lessee and other tenants of the flats in the Block ...as the Company shall consider necessary to maintain the Block as a block of good class residential flats or otherwise desirable in the general interests of the lessees of the flats in the Block'.*

79 The concierge actually employed was Mr Geoff Furness, who gave evidence on the first day of the Hearing. Mr Furness explained to the Tribunal that he was recruited for the job, having seen it advertised at the job centre. He obtained the position and was employed by Hawthorne Estates. His duties were as follows:

a. General handyman;
b. Receiving and releasing parcels;
c. Tidying the site including litter picking;
d. Changing light bulbs;
e. Reading meters.

Mr Furness said that he worked from 8 a.m. until 2 p.m. Monday to Friday.

80 Mr Furness was able to produce his diary (a copy of which was provided), in which there are entries for each day of his employment. There are in fact entries in a different hand for the period 12th - 19th April 2010. However, Mr Furness said that his induction was at the office of the Second Respondent on 19th April 2010, following which he was taken to City Heights and briefed as to his duties.

He agreed that, following questions from Mr Healey, approximately 50% of his time was engaged in parcel collection etc. He said there were 5 or 6 of these each day.

81 The Tribunal finds that Mr Healey's suggestion that the invoices in respect of the concierge service during April and May 2010 are, as with the cleaning and gardening invoices, 'bogus' or fraudulent, completely without foundation. It is clear from Mr Furness' evidence and the documents supplied, that he was indeed on site from 19th April onwards, and further that another person was carrying out concierge duties prior to that.

82 The Tribunal also agrees with Ms Gourlay that the Lease clearly permits the appointment of a concierge. The Tribunal finds that the words used in the paragraphs of the Fifth Schedule referred to in paragraph 75 above are not ambiguous, and that the reasonable tenant would perceive that the employment of a concierge at City Heights is permitted by the Lease.

83 The Tribunal does not agree with Mr Healey that it is unreasonable for the concierge to provide services such as the parcel collection service and the other services provided by Mr Furness. The fact that the former is used in the main by the occupational sub-tenants does not mean that the service is not in the leaseholders' interests. The Tribunal finds that, on the contrary, the leaseholders are likely to be content that the service is provided, because the attraction and retention of occupational tenants is of prime importance to them, and the provision of this type of service is clearly attractive to occupiers who are out at work during the day.

84 There is no challenge by Mr Healey to the wages paid to Mr Furness. The Tribunal finds that the provision of the concierge service by the Second Respondent was allowed by the Lease, and was reasonable both in principal and as to cost. The invoices challenged by the Applicant are therefore allowed in full.

Electrical Work to Bollards

85 Within the Scott Schedule items there are accounts totalling £4,864.51 (including VAT) from DCS Electrical Services, all relating to problems with the bollards at City Heights which have lights within them. All of these were challenged by the Applicant as unreasonable, the word 'duplication' appearing regularly within the Scott Schedule. Ms Gourlay said that the provision by the Second Respondent of the invoices is in itself that costs were incurred. She also said that speculation is not of itself sufficient to found a sustained criticism of the costs involved.

86 In closing his closing remarks, Mr Healey urged the Tribunal to examine the relevant accounts. He said it simply cannot be reasonable that so much money was spent on these bollards, of which he said there are about 18 or 19 on the estate, over a nine month period. As a counter to this, Mr Max had said during the Hearing that there were a lot of bollards, and they did seem to go wrong often. DCS Services were seen as a reputable company and he considered the accounts to be reasonable as to their amount.

87 The Tribunal considered the above carefully, including the invoices themselves. It noted that there is no breakdown in any of the invoices between materials and labour, and that each task was charged at unit prices of £50 (in respect of most tasks relating to the bollards) or sometime £100. Additionally there are

occasions when it appears that work done to bollards in October (said to be as the result of overheating - invoice 166) proved insufficient, as further work was done to some bollards in December which also related to overheating (invoice 160). There is also an account for dismantling the bollard outside the concierge office for £100 plus VAT, when found to be in good order (invoice 164). The overall conclusion of the Tribunal is that it agrees in principal with Mr Healey that the cost for this work during the period is simply too high, at an average approaching £250 per bollard (including VAT) assuming Mr Healey's estimate of the numbers is correct. Taking a broad brush approach, the Tribunal finds that the accounts in respect of the bollards are only reasonable as to 75% of their amount, and the Scott Schedule determinations reflect this finding.

The Scott Schedule Items

88 The detailed challenges to individual items were contained on a Scott Schedule originally prepared by the Applicant. Ms Gourlay provided a modified version of this for use at the Hearing. A summary of the challenge and the Tribunal's determinations in respect of each item is shown on the further modified Scott Schedule which appears below. The Tribunal's determination of each item is shown in bold type in the right hand column of the Schedule. The Scott Schedule is divided into seven parts, one for the Estate Charge, and then one for each House. Each section is subdivided further into the headings shown on the accounts. The left hand column shows the number of the invoice in the bundles.

2010 ESTATE CHARGE

Pge	*Description of charge including Respondents' Comments*	*Claim* **£**	*Applicant*	*Tribunal*
Consumables				
	DJ & SV Stewart. Cash paid but receipt missing.	9.43	There is no receipt - Nil	**Nil** - no evidence of payment.
10	Wilkinsons. Adhesive and masking tape	6.62	£6.62 Disputed in full as not authorised.	**£6.62** On balance of probabilities used for services.
12	T-mobile - cover for a mobile phone for the concierge	5.99	£5.99 Not handed over - not authorised by lease.	**£5.99** On balance of probabilities used for services.
LABOUR SERVICES				
Cleaning Invoices				
24	CHC - Land In House Cleaning 1st April to 30th June 2010	978.19	£655.66 disputed. Applicant says cleaning	**£978.18** See paragraphs

			did not start until 01.06.2010.	70 - 73
18	CHC - Land In House Cleaning 1st August to 31st August 2010. The charge is calculated at £9.00 per hour plus VAT for 52 hours - normal monthly hours are 88 - 89 depending on the days in the month.	549.90	£266.00 disputed because it is duplicated, as there is a cleaning cover element of this amount in invoice 43.	**£549.90** The Tribunal agrees with the Respondent that the amount for cleaning cover in invoice 43 relates to a period in August when the regular cleaner was on holiday.
Management Fees				
16, 22, 23	Management fees for 3 quarters including 4 x £1000 plus VAT for collection of service charge debts. Invoice 22 explains that the fourth quarter is charged because the service charge debt collection will not cease with the RTM.	28,493.75	The Applicant does not challenge the management charge but disputes the debt collection element of £4,700	**£27,318.75** See paragraphs 66 - 69
Previous Litigation costs				
26, 27, 28	These are the invoices from CHC-Land Limited referred to in paragraphs 29 - 59	2,736	Disputed in total	**Nil** See paragraphs 29 - 60
Gardening				
39, 58, 60	These are the invoices for gardening from Hawthorne Estates for work done in September, May and April 2010	967.00 483.70 483.70	These invoices are bogus and are disputed	**£967.00** **£483.70** **£483.70** See paragraphs 70 - 73
Concierge Costs				
55,	These are the invoices for the provision	1,060.43	These	**£1,060.43**

56	of the concierge during April and May 2010.	1,286.62	invoices are bogus and are disputed	**£1,286.62** See paragraphs 73 - 81
29, 33, 37, 41, 43, 47, 53	These Invoices are in respect of the period when it is not disputed that a concierge was present.	8717.87	It is disputed that the Lease permits a concierge and/or that the parcel collection and other services are reasonable.	**£8,717.87** See paragraphs 74 - 82
Rose UK Services Ltd				
84	This is an account for handover at the end of the 2nd Respondent's period of management. The security company was used to collect a package and hand it over at 23.30 on New years Eve.	£64.63	Not reasonable and unnecessary.	**NIL** The Tribunal agrees with the Applicant. The handover to the RTM Company need not have taken place in this manner.
Clothing receipts				
88, 89, 90	These are in respect of the 'uniform' for the concierge comprising T shirts and trousers. Paid for by credit card. The concierge needed to look smart. There were no items in a fit state to be handed over.	67.50 103.00 22.30	Not reasonable and no uniforms handed over	**£67.50** **£103.00** **£22.30** This is reasonable as the receipts show the expenditure. The Respondent's explanation accepted.
91	This is a cash item. It is not clear what this was for. The Respondent says it is for clothes.	124.94	No evidence as to what this was for	**NIL** Disallowed as no evidence as to what the payment

				was for
Vehicle removal				
93, 95	Removal of car. Cash paid to a trader for this service which is much cheaper than more conventional means. Removal of motor cycle. Ditto The Respondent is responsible for the upkeep of the parking spaces even though they are demised.	£80 £20	The Applicant states these vehicles were removed from car parking spaces. Service charges should not be used to remove vehicles from demised property.	**£80** **£20** The Tribunal agrees with the Respondent that this is its responsibility The amounts are reasonable.
Professional fees				
103	Charges from a solicitor for review of service charge provisions in the leases. Permitted by Lease and reasonable.	470	This should not be needed. It is part of manager's duty to understand the Lease.	**NIL** The Tribunal agrees with the Applicant that the Manager should not need to pay from the service charge to have the Lease interpreted.
105	Edwards Clegg solicitors invoice in respect of dealing with queries from Mr Healey and Mr Press	440.63	Agreed by Applicant	**£440.63**
107	192.com credits. Fee for credits for address finding service	£11.69	The Applicants state this is an office administration cost and is the responsibility of the manager as part of his costs of performing his	**Nil** The Tribunal agrees with Applicant that this is a cost that should be covered by management

			management role	fee.
108, 110, 112, 113, 114	Accountant's fees			**£ 1,620.00** See paragraphs 29 - 60
332	£1,822.20. This is an item for which there is no invoice, but which appears in red in the 'Schedule of Invoices' appearing at p 332 in Bundle 1.	1,822.20	This should be disallowed as no evidence of expenditure	**Nil** This may be an accounting adjustment, but if it represents expenditure for which there is no invoice, it is disallowed.
General repairs				
117	Bennett's Building Services. 1. Replaced lights in 18 bollards and two wall lights 2. Removed broken alarm panel from wall 3. Fit new drain cover to bins store Permitted by the Lease and reasonably incurred.	1,034.00	The amount is disputed as to reasonableness	**£1,034.00** On the balance of probabilities this invoice is reasonably incurred.
160, 162, 163, 164, 166, 168	DCS Electrical Services These 6 accounts, 5 of which are all dated within October 2010, with one dated December 13 2010, all relate to work to the external bollards. The Second Respondent says there are a lot of bollards and they go wrong often. These accounts are all reasonable and permitted under the Lease.	2,749.51	There must be some duplication or overcharging. There are about 18 bollards.	**£2,062.13** The Tribunal agrees with the Applicant that there is too much work charged for. The Tribunal finds that all of the invoices relating to the bollards are only

				reasonable as to 75% of their total. See paragraphs 83 - 85
119	Bennett's Building Services 1. Point crack in wall to Pasteur House 2. Take up and re-bed sunken area of paving stones at rear of Pasteur 3. Remove and re-bed 23 loose coping stones The Second Respondent says this is reasonable and permitted under the Lease	640.38	The amount is disputed as to reasonableness. It is disputed that there were sunken paving slabs.	**£640.38** On the balance of probabilities this invoice is reasonably incurred.
121	Bennett's Building Services 1. Removal of post from parking apace 405 2. 2 bags of rock salt 3. Put sand on oil leak in car park The Second Respondent says this is reasonable and permitted under the Lease	£88.12	This is disputed as to £50 because the parking space is demised and the cost of the post removal should be that of the leaseholder.	**£88.12** The Tribunal agrees with The Second Respondent. The responsibility for the maintenance of the car park remains with the Lessor.
127	Bennett's Building Services 1. Re-bed coping stones Pasteur and re-point crack in wall 2. Remove damaged bollard and spike rear of Pasteur (415 and 426) 3. Replace fire hydrant The Second Respondent says this is reasonable and permitted under the Lease	564.00	Duplicate works at p.119 in August and December for re-bedding coping stones and re-pointing cracked joints in wall. Bollard and spikes on car parking spaces are not recoverable	**£399.50** The Tribunal accepts the Applicant's contention regarding the fire hydrant and disallows this amount. On the balance of probabilities the work to Pasteur is not a duplication.

			within the service charge liability. There is one fire hydrant in road near Chapel and Pasteur House. This was adopted by Nottingham City Council in June 2008. Not recoverable within the service charge	The work to the bollard is reasonable. The responsibility for the maintenance of the car park remains with the Lessor
133	Bennett's Building Services 1. Remove grills and dig ground for larger drain. 2. Replace drainage grills with higher spec alpha drain to cope with traffic. The Second Respondent says this is reasonable and permitted under the Lease The work done was to a high standard and will last longer as a result.	940.00	This is far too high a cost for this work. It should be reduced.	**£470.00** The Tribunal agrees that this cost is too much for the work involved. It is only reasonable as to £400 plus VAT
137	Bennett's Building Services Grind and remove studs from car park spaces 306, 308, 311 and 361. The Second Respondent says this is reasonable and permitted under the Lease	94.00	The removal of parking space studs is not the recoverable under the service charge. Parking spaces were conveyed to owners at	**£94.00** The work to the studs is reasonable. The responsibility for the maintenance of the car park remains with the

			purchase. The leasehold owner of the parking space is liable for this repair.	Lessor
171 173	Lockfit Limited deadlock to key cupboard Tennant Group - deliveries book The Second Respondent says this is reasonable and permitted under the Lease	100.66 166.85	These accounts are disputed as they relate to the concierge service. These invoices are not an allowable expense.	**£267.51** The concierge service has been allowed and these invoices relate to reasonable expenditure in connection with it.

NIGHTINGALE HOUSE

Pa	*Description of charge*	*Claim* **£**	*Applicant*	*Tribunal*
Labour Services				
	CIH Actual – Ground LS007 £23,216.33 Actual LS0001 Co £3,693.71 These are adjustments made by Mr Chapman and not invoices		Agreed	
Maintenance costs				
176-247	Conflict between invoices+journal entry and finalised accounts These are adjustments made by Mr Chapman and not invoices	4,108.01 group 1 282 group 2	Agreed	
Professional fees				
248	Dickinson Dees debt collection fee It is normal practise and reasonable to pay from the service charge and then credit when recovered	59	This should be collected from leaseholder.	**£59** Agree with the Second Respondent
General repairs				
	Finalised accounts for Group 1+2 £20,038.39. Total now £19,424.21. £614.18 discrepancy This is a matter of accounting in respect of which the Tribunal has no jurisdiction	614.18	Wish to have discrepancy explained	The Tribunal agrees with the Respondent
	Closing creditors This is a matter of accounting in respect of which the Tribunal has no jurisdiction	529.87	There is no explanation for this	The Tribunal agrees with the Respondent
252 280	Invoices for Lock Fit £96.88 each Respondent agrees these are duplicates	96.88	Duplication	**£96.88** These are duplications, only one is allowed

284	Upper Cut Helicopter roof inspection (small drone). Considered a reasonable and cost effective method of inspecting the roof.	411.25	Disputed as unreasonable and expensive	**£411.25** The Tribunal considers this method to be innovative and reasonable.
306 308 309 311	MWE Ltd work to Fire alarm totalling £492.62. The 2 cheques identified are duplicates. The cheque is to Lloyds because the debt was factored. Account Reasonable	492.63	Reason for the 2 cheques queried	**£492.63** The Invoices themselves are not challenged. The Respondent's explanation is accepted.
268	Cheque for Lloyds TSB Once again this is factoring	1,240.28	Reason for this cheque queried	There is no underlying invoice which has been challenged. The Respondent's explanation is accepted.
314	Bennett's Building Services 1. Tighten handrail 2. Purchase and fix pads (minimum order £150) The Respondent says this is not a duplicate and is reasonably incurred. The pads are also used for cherry pickers to protect the grass.	376.00	This (date 17/08) is a duplicate of invoice 282 (date 05/07). The reference to pads in 282 says there are spares	**£376.00** On the balance of probabilities the invoices are in respect of different jobs and are both reasonably incurred.
318	DCS Electrical Various works to the electrics at Nightingale House, including fitting padlocks to the MCBs at a cost of £105 plus VAT. Also cost for explaining emergency test sequence to D Stuart for £37.50 plus VAT The Second Respondent was advised this was appropriate, because of abuse by tenants.	655.07	The two highlighted amounts are disputed. It is illegal and dangerous to padlock the MCBs. The property manager should not need to have	**£531.68** The Tribunal agrees with the Applicant regarding the MCBs. The explanation fee is reasonable.

			the emergency lighting explained.	
320	Nottingham Heating Services Ltd Works to bathroom floor 56 Nightingale House. This work was necessary as the leak would have spread into common areas. It would have been charged to Leaseholder if appropriate.	276.13	This is a liability of the Leaseholder which should not be charged to the service charge account.	**Nil** The Tribunal agrees with the Applicant that this is should not be charged as a service charge item.
333	G W Craig Services Attend to leak - traced to No 18 Nightingale. Leak repaired. This work was necessary as the leak would have spread into common areas. It would have been charged to Leaseholder if appropriate.	172.52	This is a liability of the Leaseholder which should not be charged to the service charge account	**Nil** The Tribunal agrees with the Applicant that this should not be charged as a service charge item.
352	DCS Electrical Services Strip down and re-terminate lighting bollards Nightingale House area. (18 November 2010) The Second Respondent says there are a lot of bollards and they go wrong often. These accounts are all reasonable and permitted under the Lease.	293.75	This is a duplication of the work in 160, 166 and 168.	**£220.31** This is yet another invoice for bollards in a short space of time. Only reasonable as to 75% See paragraphs 83 - 85

357	DCS Electrical Services Strip down and re-terminate lighting bollards Nightingale House area. (8 November 2010) The Second Respondent says there are a lot of bollards and they go wrong often. These accounts are all reasonable and permitted under the Lease.	528.75	This is a duplication of the work in 160, 166, 168 and 352	**£396.56** This is yet another invoice for bollards in a short space of time. Only reasonable as to 75% See paragraphs 83 - 85
Consumables				
363 - 383	Eon Accounts for electricity. The Second Respondent says that the amount shown in the accounts is correct as certified by Mr Chapman. The accounts themselves are confusing.	4,791.01	The Applicant does not query the accounts as such, but the fact that the invoices disclosed add up to £1,447.19 less than the amount shown in the accounts.	The Tribunal's jurisdiction does not extend to conducting an account. As the invoices themselves are not queried as to amount, Mr Chapman's figures are accepted as correct.
355 - 383	Creditors This amount is as certified by the accountant.	124.17	Position now accepted by the Applicant.	

FLEMING HOUSE

Pa	*Description of charge*	*Claim £*	*Applicant*	*Tribunal*
Consumables				
384 -391	Eon Accounts for Electricity The Second Respondent says that the amount shown in the accounts is correct as certified by Mr Chapman. The accounts themselves are confusing.	952.57	The Applicant does not query the accounts as such, but the fact that the invoices disclosed add up to £291.75. Also queried was a £76.91 'Estate charge' from CIH? After explanation by Mr Chapman, the Applicant accepted the position as disclosed in the accounts.	The Tribunal's jurisdiction does not extend to conducting an account. As the invoices themselves are not queried as to amount, Mr Chapman's figures are accepted as correct.
Labour services				
	CIH Actual Expenditure Mr Chapman explained that this is an accounting adjustment.	1,055.35	Queried by Applicant but explained by Mr Chapman to Applicant's satisfaction.	The Tribunal's jurisdiction does not extend to conducting an account.
	CIH Actual Expenditure: explanation	633.24	As above	See above
Maintenance costs				
	FM Estate accountancy Mr Chapman explained that this is	3,520.79	Difference of £202.84 Applicant satisfied with	The Tribunal's jurisdiction does not extend to

	an accounting adjustment		explanation from Mr Chapman.	conducting an account
	Bank Charges	110.80	Position now accepted by Applicant	**£110.80**
	£40 shown as creditor Mr Chapman explained that this is the estimate for the bank charges in closing down the account at transfer to the RTM Company.	40	Agreed by Applicant	**£40**
Professional fees				
	£354.64 - no invoice Mr Chapman explained that this is an accounting adjustment	353.64	Accepted by Applicant	**£353.64**
General repairs				
463	DCS Electrical Services Remedial works following testing to include RCBs to all external bollards and all outside sockets. The Second Respondent says that the account is reasonable. This is a reputable company. The account is reasonable and permitted under the Lease.	587.50	This is further duplicate work from this contractor. The same work is billed to the Estate.	**£440.63** This is yet another invoice from this company that relates to the bollards in a short space of time. Only reasonable as to 75%
469	Bennett's Building Services 1. Work to smoke vent (no power to it) 2. Tape up holes alarm panel 3. Secured 2 x loose handrails Conceded as not payable by Second Respondent	176.50	Duplication. There is already a contract with MWE for smoke vent inspections.	**Nil**
471	Bennett's Building Services 1. Cut off and remove concrete foundation spikes at back of Fleming House 2. Tighten handrails (20)	58.75	This is work in the parking spaces not recoverable by way of	**£58.75** This is reasonable. The invoice does not say the spikes

	Reasonable and authorised by the Lease.		service charge.	were in parking space. However, even if they are the responsibility for this area rests with the Respondent and not the Leaseholders.
475	G W Craig Services Plumbing repairs to sink and bathroom No 11 Fleming. This work was necessary as the leak would have spread into common areas. It would have been charged to Leaseholder if appropriate. The work was done as an emergency - the tenant was not responsive.	95.58	Plumbing repairs to toilet and sink in bathroom at 11 Fleming House not recoverable within service charge.	**NIL** The Tribunal agrees with the Applicant that this should not be charged as a service charge item.
477	Lock Fit Ltd. Faulty lock to external door, the responsibility is with Lessor under the Lease.	168.71	Replacement of the lock on the patio door at 4 Fleming House when key lost by tenants not recoverable within the service charge	**£168.71** The Tribunal agrees with the Second Respondent that the responsibility under the Lease lies with the Lessor. As the lock was faulty (rather than keys simply lost), this is reasonably incurred.

LISTER HOUSE

Pa	*Description of charge*	*Claim* £	*Applicant*	*Tribunal*
Maintenance costs				
504 - 508	Shindler invoice for lift maintenance Mr Chapman and Mr Max explained that the lift contract for the whole estate had to be terminated after the nine month period. The accounts are confusing because of the way Schindler operate their accounts.		The amount of the invoices is not disputed, but it appears the accounts and the charge are duplicated at pages 530-534. Applicant accepted explanation from Mr Chapman.	
Professional fees				
545	Dickinson Dees Debt collection Flat 8 Lister House. Authorised under the Lease. Would be credited back to service charge account when collected from Leaseholder.	118	Both invoices are a debt matter for 8 Lister House. They are not recoverable within the service charge	**£118** The Tribunal agrees that the Lease permits this in principal. There is only one invoice (the other document referred to appears to be a remittance advice for the same account).
556	Hunnington Limited Work to soffits at high level. Total bill £1,739. The excess of £250 borne by service charge account. 558 is a copy of the cheque from Zurich which was paid into the Lister Account	1,480.00	The insurance paid the £1,480. Where is the adjustment in the accounts?	**£250** The only chargeable item is the excess which the Tribunal finds to be reasonably

				incurred.
566	DCS Electrical Services Remedial works following testing to include RCBs to all external bollards and all outside sockets. The Second Respondent says that the account is reasonable. This is a reputable company. The account is reasonable and permitted under the Lease.	705.00	This is further duplicate work from this contractor. The same work is billed to the Estate.	**£528.75** The Tribunal does not find this to be a duplicate. However it is yet another invoice from this company that relates to the bollards in a short space of time. Only reasonable as to 75% See paragraphs 83 - 85
572	DCS Electrical Services Periodic testing to the 1, 2 and 3 and Lister house Tank Room.	1,410.00	This is completely unreasonable for this work. The contractor now doing the work charges £480. It should be capped at this.	**£564.00** The Tribunal agrees with Mr Healey and accepts his evidence (as the current property manager). This account is capped at £480 plus VAT
587	Bennett's Building Services 1. Work to smoke vent 2. Tape up holes alarm panel 3. Secured 2 x loose handrails This is not a duplication. Work reasonable and authorised by the Lease.	176.50	Duplication. There is already a contract with MWE for smoke vent inspections.	**£132.38** The Tribunal agrees with Mr Healey regarding the smoke vent. However, there are two other items on the account which do not appear to be disputed, and in the absence of

				evidence as to the respective values of the 3 items, reduce the account by one third.

FRANKLIN HOUSE

Pa	*Description of charge*	*Claim £*	*Applicant*	*Tribunal*
Maintenance costs				
622 626 627 - 632	Shindler invoice for lift maintenance Mr Chapman and Mr Max explained that the lift contract for the whole estate had to be terminated after the nine month period. The accounts are confusing because of the way Schindler operate their accounts.		The amount of the invoices is not disputed, but it appears the accounts and the charge may be duplicated Applicant accepted explanation from Mr Chapman.	
Professional fees				
	£40 shown as creditor Mr Chapman explained that this is the estimate for the bank charges in closing down the account at transfer to the RTM Company.	40	Agreed by Applicant	**£40**
General repairs				
	Journal Entries Explanation given by Mr Chapman	1,552.95	Queried by Applicant	**No challenge to any of the invoices**

JENNER HOUSE

Pa	*Description of charge*	*Claim £*	*Applicant*	*Tribunal*
Maintenance costs				
693 698 699 - 708	Shindler invoice for lift maintenance Mr Chapman and Mr Max explained that the lift contract for the whole estate had to be terminated after the nine month period. The accounts are confusing because of the way Schindler operate their accounts.		The amount of the invoices is not disputed, but it appears the accounts and the charge may be duplicated Applicant accepted explanation from Mr Chapman.	
Consumables				
	Journal Entries Explanation given by Mr Chapman	1,642.33	Queried by Applicant	**No challenge to any of the invoices**
Labour Services				
	Journal Entries Explanation given by Mr Chapman	6,177.73	Queried by Applicant	**No challenge to any of the invoices**
Professional fees				
	Journal Entries Explanation given by Mr Chapman	265.72	Queried by Applicant	**No challenge to any of the invoices**
General repairs				
		1,552.95	Queried by Applicant	**No challenge to any of the invoices**

Maintenance Charges				
693 - 698 699 - 708	Shindler invoice for lift maintenance Mr Chapman and Mr Max explained that the lift contract for the whole estate had to be terminated after the nine month period. The accounts are confusing because of the way Schindler operate their accounts.		The amount of the invoices is not disputed, but it appears the accounts and the charge may be duplicated Applicant accepted explanation from Mr Chapman.	

PASTEUR HOUSE

Pa	*Description of charge*	*Claim £*	*Applicant*	*Tribunal*
Consumables				
	Journal Entries Explanation given by Mr Chapman	1,231.66	Queried by Applicant who disputed £149.01 Applicant accepted explanation from Mr Chapman.	
	Labour Services	9,285.83	Queried by Applicant Dispute £2,044.73 and £1,226.90 Applicant accepted explanation from Mr Chapman.	
Maintenance costs				
778 - 789 810 - 815	Shindler invoice for lift maintenance Mr Chapman and Mr Max explained that the lift contract for the whole estate had to be terminated after the nine month period. The accounts are confusing because of the way Schindler operate their accounts.		The amount of the invoices is not disputed, but it appears the accounts and the charge may be duplicated Applicant accepted explanation from Mr Chapman.	

Professional fees				
	Bank Charges Explanation given by Mr Chapman	380.62	Agreed by Applicant	**£380.62**
	£40 shown as creditor Mr Chapman explained that this is the estimate for the bank charges in closing down the account at transfer to the RTM Company.	40	Agreed by Applicant	**£40**
General repairs				
819	G W Craig Services Repair to shower door in apartment 32 (following report of leak)	76.75	This is the responsibility of the Leaseholder and should not form part of the service charge.	**NIL** The Tribunal agrees with the Applicant
834	Bennett's Building Services Repairs to downpipe Conceded by Second Respondent	376	This has been refunded to service charge account by the indemnity insurers of contractor.	**NIL**
846	DCS Electrical Services Padlock RCBs and other work Second Respondent advised to take this course by the contractor	205.63	The RCBs should not be padlocked. This is a safety hazard and fire risk.	**NIL** The Tribunal agrees with the Applicant.
862 867	Bennett's Building Services Grind bolts from parking space, re-bed slabs, fix hand rail, repair external letterbox Re-bed coping stones, remove bollard and spikes, replace fire hydrant cover These accounts are reasonable and permitted by Lease. Car park and outside of building the responsibility of Lessor.	188.00 564.00	Applicant disputes the grinding off, as car park demised to Lessees. These accounts should be reduced by 25%	**£188.00** **£564.00** The Tribunal; agrees with Second Respondent. The responsibility for the car park lies with the Lessor despite the

				demise.
891	C and J UPV Maintenance Replace sash jammers at 4 Pasteur House. Lease makes it clear the windows are the responsibility of the Lessor (Paragraph 2 (c) Schedule 1 Part 1).	211.50	Disputed as forms part of Flat 4 and should not be part of service charge.	**£211.50** The Tribunal agrees with the Second Respondent as to the extent of the demise.

Costs

89 During the interlocutory stages of this Application, there were occasions when both the Applicant and the Second Respondent either submitted cost applications in respect of that stage of the proceedings, or indicated that it or he would do so at a later stage. The Tribunal informed the parties that any applications as to costs would not be considered until the conclusion of the substantive proceedings.

90 The parties are reminded that by Rule 13 (5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Rules'), an application for an order for costs must be made within 28 days after the date this Decision is sent to the parties. For the avoidance of doubt, the Tribunal requires any applications already made to be re-submitted.

Section 20C

91 The Application requested an order under section 20C of the 1985 Act that the costs of the Respondents in connection with the proceedings may not be regarded as relevant costs in connection with any future service charge. Neither of the Respondents made any submissions with regard to the section 20C Application, perhaps because it is difficult to envisage any circumstances in which they would be in a position to impose such a charge. In the circumstances the Tribunal concludes that it is reasonable to grant the Application and therefore makes the Order requested.

Application for permission to appeal

92 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made to the First-tier Tribunal within 28 days of this decision (Rule 52 (2)) of the Rules.

Judge W J Martin

7th January 2015