

8974

**HM COURTS AND TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Case Number:** CHI/00HY/LIS/2012/0093 and CHI/00HY/LSC/2012/0136

**Re:** 54 and 60 Edward Street, Westbury, Wiltshire, BA13 3BQ

**In the matter of** 2 applications under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges and an application under Section 20C of that Act.

**Between:**

**1. Duncan George Wilkins  
2. Mrs. T L Cook** Applicants

and

**City Freeholds Limited** Respondent

Date of application:	28 September 2012
Date of pre-trial review:	14 November 2012
Date of hearing:	12 February 2013
Members of the Tribunal:	Mr. J G Orme (Lawyer Chairman) Mr. S J Hodges FRICS (Valuer member) Mr. M R Cook (Lay member)
Date of decision:	4 April 2013

**Decision of the Leasehold Valuation Tribunal**

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

- 1. The contributions towards insurance and service charges payable by each of Duncan George Wilkins in respect of 60 Edward Street, Westbury, Wiltshire, BA13 3BQ and Mrs. T L Cook in respect of 54 Edward Street, Westbury are:  
For the 8 months ended 31 May 2010 the sum of £315.43 plus £50.50 for insurance;  
For the year ended 31 May 2011 the sum of £486.82 plus £92.13 for insurance;  
For the period from 1 June 2011 to 31 December 2012 the estimated sum of £815.92 plus £151.75 for insurance.  
VAT at the appropriate rate is payable on the amounts of service charge and insurance if the Respondent, City Freeholds Limited, is registered for VAT purposes.**

**Those sums are payable to City Freeholds Limited which should give credit for any sums paid on account of such service charges and insurance.**

- 2. Further the Tribunal orders, pursuant to section 20C of the Landlord and Tenant Act 1985 (as amended), that all costs incurred by City Freeholds Limited in connection with these applications are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.**

### **Reasons**

#### **The Background**

1. 50 to 64 Edward Street, Westbury, Wiltshire, BA13 3BQ ("the Property") is a building consisting of 8 purpose built flats. The freehold of the Property is now owned by the Respondent, City Freeholds Limited ("the Company").
2. Duncan George Wilkins is the leasehold owner of No.60. Mrs. T L Cook is the leasehold owner of No. 54.
3. On 23 May 2011 the Company issued against Mr. Wilkins a claim in the Northampton County Court under case number 1QT52727. The claim was for a total sum of £1,563.14 alleged to be due for rent, service charges, administration charges and interest in relation to Flat 6, 54 Avenue Road, Trowbridge and 60 Edward Street, Westbury. Mr. Wilkins filed a defence to the claim. On 10 August 2012, after various proceedings, details of which are not known to the Tribunal, District Judge Asplin, sitting at Trowbridge County Court, made an order that  
*"1. Both parties are to apply to the Leasehold Valuation Tribunal by 28 September 2012. If Claimant fails to so apply as above then this claim is struck out. If Defendant fails to so apply then there is judgment as asked without further order. 2. Save as provided in paragraph 1 above this claim remains stayed generally."*
4. On 28 September 2012, Mr. Wilkins applied to the Tribunal (application number CHI/00HY/LIS/2012/0093) for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") of his liability to pay and the reasonableness of service charges for the years ended 31 May 2011 and 31 May 2012 and the estimated service charge for the year ending 31 May 2013. He asked for a full break down of the service charges.
5. On 24 September 2012, the Company applied to the Tribunal (application number CHI/00HY/LSC/2012/0136) for a determination pursuant to section 27A of the Act of the liability of Mr. Wilkins to pay and the reasonableness of service charges for the years ended 31 May 2010 and 31 May 2011 and for the period from 1 June 2011 to 31 December 2012.

The Company asked for a determination that the service charges were fair and just.

6. On 26 October 2012, Mrs. T L Cook applied to be joined as an applicant to application number CHI/00HY/LIS/2012/0093 to determine the service charges payable in respect of No.54 Edward Street.
7. The Tribunal directed that a pre-trial review be held. That review took place on 14 November 2012. Mr. Wilkins appeared in person. Miss Connor, a director of the Company, appeared on behalf of the Company. It was agreed that the service charges in dispute were for the years ended 31 May 2010 and 31 May 2011 and the period from 1 June 2011 to 31 December 2012. The parties agreed that the issues raised by the two applications were the same.
8. Mr. Wilkins indicated at the pre-trial review that he had made an error in the application form when he indicated that he did not wish to apply for an order under section 20C of the Act and that he did wish to apply for such an order.
9. At the pre-trial review, directions were given:
  - 1) For Mrs. T L Cook to be joined as an applicant;
  - 2) For application number CHI/00HY/LSC/2012/0136 to be consolidated with application number CHI/00HY/LIS/2012/0093 and to be dealt with under that number;
  - 3) For the Company to prepare a written statement of case explaining how the service charges were calculated;
  - 4) For the Applicants to prepare a written statement of case identifying the items of service charge which were disputed and their reasons for disputing them;
  - 5) For the Company to prepare a reply justifying those items which were disputed;
  - 6) For the matter to be listed for hearing;
  - 7) For the Applicants' application under section 20C to be considered at the hearing.
10. The Tribunal was not aware of any application having been made by any party for a determination to be made under schedule 11 of the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness of the administration charges claimed by the Company. In the circumstances, this Tribunal has no jurisdiction to consider the reasonableness of those administration charges.

### **The Law**

11. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20C, 21B and 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act").
12. Section 18 of the Act provides:

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

13. Section 19 provides:-

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

14. Section 20C provides:-

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

15. Section 21B provides that a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The form of that summary is prescribed. A tenant may withhold payment of a service charge if the prescribed summary is not provided. Subsection (4) provides *"Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of*

*service charges do not have effect in relation to the period for which he so withholds it."*

16. Section 27A provides:-

- 1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to:-*
  - a. *the person by whom it is payable,*
  - b. *the person to whom it is payable,*
  - c. *the amount which is payable,*
  - d. *the date at or by which it is payable, and*
  - e. *the manner in which it is payable.*

Subsections 2 to 7 of section 27A are not relevant in this application.

### **The Lease**

17. The Tribunal had before it a copy of the lease relating to 60 Edward Street. It is dated 20 April 2006 and was made between Country Estates (GB) Limited as landlord and Duncan George Wilkins as tenant ("the Lease"). The Tribunal was informed that the lease of 54 Edward Street is substantially in the same form.
18. By the Lease, the landlord demised the flat known as 60 Edward Street together with a parking space to the tenant for a term of 125 years from 1 January 2006 at a yearly rent of £1.
19. Clause 1 contains various definitions including:
  - "Expenditure" means the aggregate of all reasonable costs fees and expenses contained or referred to in Part II of the Sixth Schedule reasonably and properly incurred by the Landlord ...*
  - "Financial Year" means the period from 1<sup>st</sup> January in every year to 31<sup>st</sup> December in that year or such other yearly period as the Landlord may reasonably determine from time to time*
  - "Service Charge" means such proportion of the Expenditure as the Landlord shall from time to time reasonably and properly determine as being an appropriate and fair proportion in respect of the Premises ...*
  - "Services" means the services which the Landlord covenants to provide in clause 6.1.1 and 6.1.2 and the other services listed in Part I of the Sixth Schedule which the Landlord covenants to provide in accordance with the terms of clause 6.1.3.*
20. The demise is at Clause 2. Included in the rent are "(b) such proportion of the cost to the landlord of insuring the Development in accordance with Clause 2.1 of the Fifth Schedule as is attributable to the Premises..." and "(c) all monies payable by the Tenant as service charge".
21. The Tenant's covenants are set out in the fourth schedule and include a covenant to pay the rents reserved in Clause 2 and to pay interest on any rents which remain unpaid 7 days after their due date.
22. The Landlord's covenants are set out in the fifth schedule and include a covenant to insure the Property.

23. Clause 6 is headed "*Service Charge*". Clause 6.1 contains a covenant by the Landlord to maintain the main structure of the Property, to keep the common parts in good repair and condition, clean and lit and to supply such of the other services as are listed in Part I of the sixth schedule as are reasonably necessary for the proper operation of the Property. Clause 6.3 provides for the Landlord to prepare service charge accounts showing the expenditure for that financial year within 3 months from the end of the financial year and to supply a copy to the Tenant. Clause 6.4 provides for the Tenant to pay a sum on account of the service charge on the usual quarter days and for there to be a balancing exercise at the end of each financial year with any shortfall due from the Tenant to be payable to the Landlord on demand and any excess payment be credited to the Tenant against the next quarterly payment of service charge.

24. Clause 6.8 provides as follows:

*6.8.1 Limit on Service Charge.*

*In this clause 6.8, the following meanings shall have the following explanations:*

*"Base Figure" means the amount of the All Items Index figure of the Index published 12 months before the relevant Service Charge Review Date*

*"First Service Charge Review Date" means 1st January 2007*

*"Index Figure" means the amount of the index figure of the Index published immediately before the relevant Service Charge Review Date for which the Index Figure is required to be calculated*

*"Index" means the All Items Index of Retail Prices published by Office of National Statistics or any official publication substituted for it*

*"Initial Service Charge": Four hundred and twenty five pounds (£425.00) per annum (plus value added tax)*

*"Service Charge Review Date" means the first day of each Financial Year throughout the Term, Commencing on 1st January 2006*

*6.8.2 From and including the date of this Lease until the First Service Charge Review Date, the Service Charge payable under this clause 6 shall be the Initial Service Charge*

*6.8.3 From and including the First Service Charge Review Date, the Service Charge shall be reviewed on an annual basis in accordance with clause 6.8.4*

*6.8.4 The Landlord and the Tenant agree that the amount payable by the Tenant under this clause 6 shall in the case of the First Service Charge Review Date be the Initial Service Charge plus an amount equivalent to the rise in inflation calculated from the 1st January 2006 to the First Service Charge Review Date and in the case of subsequent Service Charge Review Dates, shall be the Service Charge payable for the preceding Financial Year plus an amount equivalent to the rise in inflation calculated from the preceding Service Charge Review Date up to the next Service Charge Review Date*

*calculated in both cases by reference to the Index as defined above and in accordance with the following formula: Reviewed Service Charge = Service Charge payable immediately before the relevant Service Charge Review Date X Index Figure ÷ Base Figure.*

Clause 6.8.5 and 6.8.6 provide for changes in the base figure and for resolving disputes.

*6.8.7 The Initial Service Charge increased yearly as provided for in clause 6.8.4 shall be reviewed by the Landlord every five years calculated from 1st January 2006 and may be adjusted by the Landlord (acting reasonably) in accordance with the criteria for adjustment in the definitions of "Service Charge" in clause 1 of this Lease or to take account of increased unusual, unanticipated, or exceptional items of Expenditure. Any such adjustment shall be notified to the Tenant in writing by the Landlord. Any dispute under this clause shall be referred to a surveyor as provided for in clause 6.8.6.*

25. Part I of the sixth schedule sets out details of the services. Part II of the sixth schedule sets out the items which may be included in the expenditure. They include the costs of carrying out or providing the services, the cost of keeping full service charge accounts and employing auditors to audit them, "3. *The proper and reasonable fees of the Landlord for any of the Services (including management of the Development) that shall be undertaken by the Landlord or ... and not by a third party*" and "8. *The cost of effecting insurance in respect of the common parts and against the liability of the Landlord to third parties ...*"

### **Inspection**

- 26 The Tribunal inspected the Property on 12 February 2013 in the presence of Mr. Wilkins and Miss Connor. Mrs. Cook was neither present nor represented.
- 27 The Tribunal was told that the Property was constructed in about 2006. It consists of one building on 3 floors divided into 8 flats. The flats are arranged around 3 communal entrance doors and staircases. The Property appears to be maintained in reasonable condition.
- 28 Externally there are 2 car parking areas, one at each end of the Property.

### **The Hearing**

- 29 The hearing took place at the Fieldways Hotel, Trowbridge on 12 February 2013. Mr. Wilkins appeared in person. Mrs. Cook was represented by her managing agent, Nicola Wilks, an employee of Complete Lettings. The Company was represented by Miss Connor.

### **The Evidence**

- 30 In accordance with the directions, the Company had filed a bundle of documents including copies of the service charge accounts for the 8

month period ended 31 May 2010 and the year ended 31 May 2011 and an estimated account for the period from 1 June 2011 to 31 December 2012. The accounts were accompanied by a statement setting out how the service charges were calculated, a statement from the Company's accountant, Mr. Julian Humphries of Baker Tilly, a statement from the Company's book-keeper, Caroline Shaw trading as Shaw Accounts and Payroll Services, copies of various invoices sent to the Applicants, a copy of the statement of tenants' rights and obligations which accompanied the invoices and statements of account for the Applicants.

- 31 In reply, Mr. Wilkins had filed a brief statement of case in which he stated that the general dispute "*is with regards to Directors Remuneration, Accountancy, Book-keeping and Motor Expenses.*" He said that he had not been provided with a detailed breakdown as to how those costs had been calculated.
- 32 There was no written submission from Mrs. Cook.
- 33 In reply, the Company filed a brief statement relying on its original submission.
- 34 Miss Connor gave oral evidence at the hearing. The Company had purchased the freehold of the Property in 2009. The accounts for the 8 months to 31 May 2010 covered the period from the date of purchase. The total expenditure incurred by the Company in relation to the Property was divided equally between the 8 flats.
- 35 The Tribunal asked Miss Connor to address the Tribunal as to her understanding of clause 6.8 of the Lease. She submitted that it did not provide for a cap on the amount of the service charge. She said that it would be unreasonable to expect the landlord to provide services at a loss. She considered that there was a contradiction in the Lease and, having taken advice from the Company's accountant, the Company was seeking to recover its total expenditure. The Company had not carried out any indexation as required by clause 6.8.4 nor had it instigated any review as provided by clause 6.8.7. There had been no notification of increase of service charge to leaseholders in accordance with clause 6.8.7.
- 36 Mr. Wilkins did not comment on the issue. Miss Wilks submitted that clause 6.8 did impose a cap on the service charge and that capping encouraged leaseholders to take an active part in a review of the service charge.
- 37 Miss Connor said that the quarterly service charge in advance had been £131.25 per quarter from 2006 to 2010. It was increased to £225.00 per quarter in September 2010. When the Company purchased the Property, it had merely adopted the existing figure. She confirmed that invoices had been sent to the Applicants for quarterly payments on account. £1,589.30



had been demanded from each of the Applicants on account of service charges for the period ended 31 December 2012.

- 38 She confirmed that copies of the final service charge accounts had been sent to the Applicants together with invoices for any shortfall having taken into account those sums demanded on account. The invoices for the period ended 31 May 2010 were dated 1 September 2010. The invoices for the year ended 31 May 2011 were dated 24 August 2011. The final accounts for the period ended 31 December 2012 had not yet been prepared and no invoices had yet been issued for any shortfall.
- 39 She confirmed that all invoices for service charges were accompanied by statements complying with section 21B of the Act.
- 40 She was unable to say how much was outstanding from each of the Applicants in relation to service charges as the statements of account included other items such as interest and administration charges and, in the case of Mr. Wilkins, sums due in respect of another property.
- 41 Miss Connor explained how the charges for electricity, cleaning, window cleaning, insurance and legal fees had been calculated in the accounts. They reflected the actual costs incurred in relation to the Property. Neither Applicant objected to any of those items of expenditure.
- 42 In relation to repairs, Miss Connor said that there had been extraordinary expenditure in 2011 including work relating to the fire prevention systems, repairs to the roof and repairs to the car park lighting following vandalism. In relation to the forecast for 2012, she said that the 2011 figure had been extrapolated forward. There had been no planned items of work. Some repairs had been carried out. She estimated that the actual cost incurred had been about £1,500.
- 43 The costs for accountancy and book-keeping were combined in the 2010 accounts but shown separately in the 2011 and 2012 accounts.
- 44 The book-keeper was paid on an hourly basis. She was responsible for maintaining the accounts, dealing with incoming invoices, raising invoices for service charges and other charges and preparing the trial balance of the bank accounts. She worked on both the Property and 9 other properties owned by the Company which incorporated a total of 48 flats. In 2010 and 2011, the total of the book-keeper's costs had been averaged over the 48 flats. In 2012 the costs shown in the accounts would be specific to the Property. The costs represent amounts actually paid by the Company to the book-keeper.
- 45 The accountancy fees represent all fees charged by Baker Tilly for all work done for the Company including preparation of the service charge accounts for all properties owned by the Company and preparation of the statutory accounts for the Company. The fees invoiced by Baker Tilly

- were apportioned between the properties based on the number of flats in each property.
- 46 The remaining charges in the accounts relate to management charges. Miss Connor said that she did all the management work herself. She had not considered putting the work out to a managing agent and had not obtained any estimate of the cost of doing that. The management costs were claimed under paragraph 3 of part II of the sixth schedule to the Lease.
  - 47 In 2010, there was a charge of £1,061 for motoring expenses and £746 for wages. She said that the motoring expenses were the actual costs incurred in relation to the Property charged at 45p per mile except for some costs, such as banking which might be apportioned between more than one property. The expenses covered trips from the office in Steeple Ashton to the Property for routine inspections, meeting with contractors, viewing and banking. The costs for 2010 were higher than subsequent years to reflect extra work involved in setting up the management of the Property. On reflection she accepted that £1,061 was high and thought that £140 would be a reasonable sum. The item for wages represented her wages. It was charged at a flat rate of £140 per flat and covered her time for managing the Property.
  - 48 The 2011 accounts include charges of £197 for motoring expenses, £2,451 director's remuneration, £108 postage and stationery, £61 telephone and £83 bank charges. Miss Connor said that the motoring expenses represented her actual expenses for the year. The director's remuneration had been fixed following a discussion with the accountant to represent what was considered to be a fair remuneration for her work in managing the properties and represented £306 per flat. The charges for postage, telephone and banking were the total cost of those items to the Company divided by the total number of flats managed.
  - 49 The estimated accounts for the period ended 31 December 2012 provided for an increase of 4% for inflation on all items and which were then increased proportionately to take account of the 19 month period covered by the accounts. This resulted in estimated charges of £324 for motoring expenses, £4,036 director's remuneration, £178 for postage and stationery, £100 for telephone and £136 for bank charges.
  - 50 None of the Applicants gave further evidence or made further submissions.
  - 51 Following the conclusion of the hearing, the Tribunal wrote to the parties raising various issues concerning the terms of the Lease and invited the parties to make further submissions relating to the interpretation of clause 6.8 of the Lease.
  - 52 Mr. Wilkins made further submissions by letter dated 26 March in which he submitted that clause 6.8 of the Lease imposed a limit on the service

charge of £425 which is index linked, that the landlord is entitled to charge VAT in addition to that sum if appropriate and that the cost of insurance is included within the service charges which are so limited.

- 53 The Company made further submissions by letters dated 20 and 25 March. It submitted that clause 6.8 does not operate to limit the amount of the service charge, that the landlord is entitled to charge VAT if registered for VAT purposes and that, if the limit does apply, the cost of insurance is not included within the service charges so limited. In support of its submissions, it relied on the decision of the Leasehold Valuation Tribunal in case number *CHI/00HY/LSC/2010/0175 re: 66A Dickens Avenue, Corsham*. It said that the lease in that case included a provision identical to clause 6.8 and that the Tribunal in that case had not imposed a limit on the amount of service charges.

### **Conclusions**

- 54 It is clear from the terms of the Lease that the Company is entitled to demand payments in advance on account of service charges. In the absence of any contrary provision in the Lease, the Company is entitled to split the expenditure equally between the 8 flats.
- 55 The Tribunal accepts the evidence of Miss Connor that all invoices for payments of service charges, whether on account or for shortfalls were accompanied by an appropriate statement of tenants' rights and obligations as required by section 21B of the Act.
- 56 The Tribunal accepts the evidence of Miss Connor in relation to the charges which appear in the 2010 and 2011 accounts in respect of repairs, electricity, cleaning, window cleaning, legal fees and insurance. They were costs actually incurred in relation to the Property. There is no suggestion that the sums involved were unreasonable or that the services supplied were not of a reasonable standard. The Applicants did not challenge those costs. The Tribunal allows those costs in full.
- 57 The total charges for accountancy and book-keeping were £1,109 in 2010 and £1,532 in 2011. The estimated amount for 2012 was £2,522. These sums appear high for the amount of work involved in producing what are fairly basic and simple service charge accounts. Miss Connor accepted that the accountancy charges included charges for preparing the Company's statutory accounts. However, she said that they were the actual costs incurred by the Company, that they were necessarily incurred in connection with the management of the Property and that the total costs were apportioned on a reasonable basis. The Tribunal accepts that accountancy and book-keeping charges are a proper charge and are recoverable under part II of the sixth schedule provided that the amounts are reasonable. The Applicants produced no evidence as to what would be a reasonable charge for these items. Although the Tribunal would have preferred to see some evidence of competitive tendering for these services or some other justification for the amount of the charges, there is no evidence before the Tribunal to show that the amounts actually

incurred in 2010 and 2011 are unreasonable. The Tribunal allows those charges as claimed. However, the Tribunal can see no reason why the estimated accountants' charges for 2012 should be increased. Having been provided with income and expenditure figures it should cost no more to produce accounts for a 19 month period than for a 12 month period. The Tribunal reduces the estimate of £1,340 for this item to £814.

- 58 The Tribunal considers that the charges for director's remuneration, motor expenses, postage, telephone and bank charges are all part of the proper costs of managing the Property. The Tribunal accepts that such charges are a proper charge and are recoverable under paragraph 3 of part II of the sixth schedule.
- 59 The total of such costs was £1,807 in 2010 and £2,900 in 2011. The estimated costs for 2012 are £4,774. The Tribunal considers that such costs are high. The Tribunal accepts that there is much work to be done managing a property such as this even where the common parts are not substantial. The Property must be inspected on a regular basis, the calls of leaseholders must be attended to and any necessary maintenance and repair work organised. The Tribunal considers that if a managing agent had been employed to manage the Property on behalf of the Company, it might have been expected to charge £250 per flat plus VAT and mileage. Postage, telephones and banking would be included in that figure. £250 plus VAT at 20% equates to £300 and the Tribunal will allow a maximum of that sum per flat plus mileage.
- 60 Miss Connor accepts that the amount claimed for motor expenses in 2010 was high. She suggested £140. The Tribunal considers that to be a reasonable amount and will allow that sum. The amount claimed for wages in 2010 was £746 which is less than the figure of £300 per flat. The Tribunal considers that that figure is reasonable and will allow that sum as claimed.
- 61 For 2011, the Tribunal considers that the amount of £197 claimed for motor expenses is reasonable and will allow that sum. The remaining items of management exceed the figure of £300 per flat and the Tribunal will allow only the total sum of £2,400 for those items.
- 62 For the estimated service charge for 2012, the Tribunal considers that it is reasonable to allow an inflationary increase of 4% and a pro rata increase for the costs of cleaning, electricity, book-keeping, legal fees and insurance. However, there is no justification for such increases in the amount claimed for repairs. There was no planned maintenance schedule, there was no suggestion that there were any extraordinary items to be incurred during the year whereas there had been some one off items in 2011 which were unlikely to be repeated. The Tribunal will allow the actual figure of £1,500 suggested by Miss Connor. As already indicated, the estimate for the accountants' charges will be reduced to £814. The Tribunal will allow the estimated figure of £324 for mileage. For other management items, the Tribunal will allow the figure of £300 per

flat increased proportionately to take account of the 19 month period which results in a figure of £475 per flat or £3,800 overall.

- 63 Attached at Appendix 1 to this decision is a spreadsheet which shows the adjusted service charge accounts taking into account the Tribunal's decisions. For reasons which are explained below, the amounts of insurance are shown separately. The total recoverable expenses are £3,074 in 2010, £7,264 in 2011 and an estimated amount of £9,030 in 2012. The proportion applicable to each leaseholder is one eighth of those totals, namely £384.25 in 2010, £908.00 in 2011 and an estimated amount of £1,128.75 in 2012. The contributions for insurance are payable in addition to those sums and amount to £50.50 in 2010, £92.13 in 2011 and an estimated sum of £151.75 in 2012. Those figures are the amount per flat.
- 64 However, those calculations do not take account of the terms of clause 6 of the Lease. The Tribunal does not accept Miss Connor's submission that there is a contradiction between the provisions of clause 6.3 and 6.4 on the one hand and clause 6.8 on the other. In construing the Lease, the Tribunal must give a common sense interpretation to the terms of the Lease and in the event of an ambiguity, such ambiguity must be construed against the landlord.
- 65 The Tribunal is satisfied that there is no contradiction in the terms of the Lease. The primary intention of the service charge provisions is to allow the landlord to recover its expenditure from the leaseholders. However, clause 6.8 is designed to ensure that there are no undue fluctuations year by year in the amount payable by the leaseholders. The service charge was initially set at £425.00 per year plus VAT. That sum is increased annually in proportion to the increase in the Retail Prices Index. The landlord is not entitled to recover any greater sum. If that results in the landlord being unable to recover all of its expenditure, it is entitled to review the amount of the initial service charge every 5 years and increase it to a more realistic figure under clause 6.8.7. The Company has failed to carry out such a review. In the circumstances, the Company is only entitled to recover the initial service charge increased by RPI. At Appendix 2 to this decision is a calculation of such increases. The position is complicated by the fact that the Lease provides for a financial year ending on 31 December, whereas the Company has chosen different dates. The figures have had to be adjusted accordingly to take account of the different periods of the accounts. The result is that the Company is entitled to recover only £315.43 for the 8 months ended 31 May 2010, £486.82 for the year ended 31 May 2011 and £815.92 for the 19 months ended 31 December 2012. If the Company is entitled to charge VAT, VAT at the appropriate rate should be added to those sums.
- 66 However, the amounts payable by the Applicants as a contribution towards the cost of insuring the Building are not included within the definition of "service charge" and are therefore not subject to the limit on service charges. Clause 2(b) of the Lease provides for the contribution

towards insurance to be payable as a separate part of the rent. Clause 2(c) provides for the service charge to be paid as a separate item. In Clause 1 of the Lease, "Service Charge" is defined by reference to the "Expenditure". "Expenditure" is defined as the cost of providing the items listed in Part II of the sixth schedule. Part II of the sixth schedule does not include the cost of insuring the building (which is separately dealt with in the fifth schedule) as opposed to the cost of insuring the common parts which is dealt with in paragraph 8 of part II of the sixth schedule.

- 67 Although the cost of insuring the common parts may form part of the service charge, the Tribunal has no evidence before it as to what part of the total cost of insurance represents insurance of the common parts. Using its own knowledge and experience, the Tribunal considers that the part of the cost of insurance which would be attributable to the common parts would be minimal. The Tribunal therefore determines that all of the cost of the insurance should be excluded from the service charge which is subject to the provisions of clause 6.8. This means that the cost of insurance is payable in addition to the capped amount of the service charge. The amounts are set out at paragraph 63 above.
- 68 The Tribunal has considered the decision relating to *66A Dickens Avenue*. There is no reference in that decision to a clause similar to clause 6.8. It may be that the attention of the Tribunal in that case was not drawn to such a provision. In any event, the decision of that Tribunal is not binding on this Tribunal.
- 69 The Tribunal is unable to determine whether or not the Applicants have paid all or any part of the sums which the Tribunal has found to be due from the Applicants as it has not been provided with that information. The parties will have to carry out their own reconciliation.
- 70 As has already been stated, the Tribunal has no jurisdiction in this application to make any determination in respect of the administration charges claimed by the Company. The Tribunal has no jurisdiction to determine any claim for interest.
- 71 **Section 20C.** Mr. Wilkins submitted that the Tribunal should make an order under section 20C. He said that from the outset he had alleged that the charges were unreasonable. He had employed an accountant in an attempt to resolve the dispute but he had not been able to inspect all the accounts and vouchers. He was just seeking a breakdown of the costs.
- 72 Miss Connor opposed the application. She said that the Company had made the accounts and vouchers available for inspection but the Applicants had not availed themselves of that opportunity. She said that the Company was entitled to recover any costs incurred in these proceedings through the service charge under part II of the sixth schedule.

73 The Tribunal has heard conflicting evidence as to the attempts made to explain the service charge accounts. There may be an element of truth on both sides. It would not have been difficult for the Company to provide a clear and transparent explanation as to how its costs of managing the Property had been calculated. The Tribunal finds as a fact that the Company has failed to make proper attempts to explain and justify the accounts. The Tribunal has found that the items in the accounts which were challenged, namely the management charges, were in part unreasonable. Furthermore, the Tribunal has found that the capping provisions in the Lease have been ignored by the Company. In the circumstances, the Tribunal considers that it is just and equitable to make an order under section 20C.

Mr. J G Orme  
Chairman  
Dated 4 April 2013

CHI/00HY/LIS/2012/0093

60 Edward Street, Westbury

Appendix 1 to decision of the Leasehold Valuation Tribunal.

	31.05.2010	31.05.2011	estimated 31.12.12
Repairs	£ 270.00		
Premises repairs and expenses		£ 2,279.00	£ 1,500.00
Electricity	£ 209.00	£ 366.00	£ 603.00
Cleaning	£ 260.00	£ 300.00	£ 494.00
Window cleaning	£ 165.00	£ 150.00	£ 247.00
Legal fees	£ 175.00	£ 40.00	£ 66.00
Accountancy	£ 1,109.00	£ 814.00	£ 814.00
Book-keeping		£ 718.00	£ 1,182.00
Motor expenses	£ 140.00	£ 197.00	£ 324.00
Wages/director's remuneration	£ 746.00	£ 2,400.00	£ 3,800.00
Postage and stationery		£ -	£ -
Telephone		£ -	£ -
Bank charges		£ -	£ -
<b>Total</b>	<b>£ 3,074.00</b>	<b>£ 7,264.00</b>	<b>£ 9,030.00</b>
Amount per flat 1/8th	£ 384.25	£ 908.00	£ 1,128.75
Insurance	£ 404.00	£ 737.00	£ 1,214.00
Insurance per flat 1/8th	£ 50.50	£ 92.13	£ 151.75



CHI/00HY/LIS/2012/0093

60 Edward Street, Westbury,

Appendix 2 to decision of the Leasehold Valuation Tribunal

Calculation of service charge capping limit

Date	Base figure	index figure	Index/Base	Reviewed s/c excl VAT
01.01.06	194.1			£ 425.00
01.01.07	194.1	202.7	1.044307058	£ 443.83
01.01.08	202.7	210.9	1.040453873	£ 461.79
01.01.09	210.9	212.9	1.009483167	£ 466.16
01.01.10	212.9	218.0	1.023954908	£ 477.33
01.01.11	218.0	228.4	1.047706422	£ 500.10
01.01.12	228.4	239.4	1.048161121	£ 524.19

For 8 months ended 31 May 2010:

3 months at 2009 rate = £116.54

5 months at 2010 rate = £198.89

Total: £315.43

For 12 months ended 31 May 2011:

7 months at 2010 rate = £278.44

5 months at 2011 rate = £208.38

Total: £486.82

For 19 months ended 31 December 2012:

7 months at 2011 rate = £291.73

12 months at 2012 rate = £524.19

Total: £815.92