10112

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CX/LSC/2013/0070** **MAN/00CX/LDC/2014/0010**
Properties	:	**Properties at Woodcote Fold Oakworth Keighley BD22 0QG**
Applicants (Interest shown on attached Schedule)	:	**Jeremy Varley** **Paul Singleton and Gillian White** **Helen Hutchinson** **Hannah Harwood** **Anna Nikavcevic** **Susan Swaine** **Richard Christian, Daniel Cooper and Tobias Neale** **Edward Sissling** **Lisa Brett** **Richard Smith**
Respondent	:	**Ferncedar Property Management Company**
Representative	:	**Mr Neil Cullen** **Mr David Rothera**
Case Reference	:	**MAN/00CX/LSC/2013/0041** **MAN/00CX/LDC/2014/0010**
Property	:	**44 Woodcote Fold, Oakworth, Keighley BD22 0QG**
Applicant	:	**Ferncedar Property Management Company**
Respondent	:	**David Senior**
Type of Applications	:	**Landlord and Tenant Act 1985 – Section 27A** **Landlord and Tenant Act 1985 – Section 20ZA**
Tribunal Members	:	**Mrs J. E. Oliver** **Mrs Aisling Ramshaw** **Dr Jean Howell**
Date of Determination	:	**1st and 2nd May and 31st July 2014**
Date of Decision	:	**1st August 2014**

DECISION

Decision

1. The Applicants had no obligation to pay their service charges for any of the years demanded until 21st August 2013.

2. The charge for top water for the years 2009-10 and 2010-11 is reduced to £85 per annum per Applicant per property. The charge for 2011-2012 is reduced to £96 and in 2012-13 to £100 per property.

3. In 2009-2010 the total amount by which the service charge is reduced is £171.83.

4. In 2010-2011 the total amount by which the service charge is reduced is £2341.43.

5. In 2011-2012 the total amount by which the service charge is reduced is £5214.44

6. In 2012-2013 the total amount by which the service charge is reduced, excluding major works is £4374.63.

7. The major works carried out in 2012-13 and 2013-14 are subject to the consultation requirements of s.20 of the Landlord & Tenant Act 1985.

8. The application for dispensation pursuant to s.20ZA of the Landlord & Tenant Act 1985 is refused.

9. The cost of the major works in 2012-2013 is capped at £3640.07.

10. The Respondent is to credit the service charge account for the years to 4th January 2011 with a sum equal to the amount it has been overcharged for VAT in that period in respect of all the services.

11. An order is made pursuant to s.20C of the Landlord & Tenant Act 1985.

12. No order for costs is made for the Respondent.

13. The Respondent is to reimburse the Applicants the fees paid to the Tribunal in respect of the proceedings.

Reasons

Introduction.

14. This is an application by Jeremy Varley, Paul Singleton and Gillian White, Helen Hutchinson, Hannah Harwood, Anna Nikavcevic, Susan Swaine, Richard Christian, Daniel Cooper and Tobias Neale, Edward Sissling, Lisa Brett and Richard Smith for a determination and the reasonableness of service charges relating to various properties at Woodcote Fold Oakworth Keighley (the Properties) pursuant to section 19 and 27A of the Landlord and Tenant Act 1985 (the Act).

15. There is also a referral from Skipton County Court arising from an application by Ferncedar Property Management Ltd (the Respondent) for the payment of arrears of service charges by Mr David Senior who is the leaseholder of 44 Woodcote Fold Oakworth Keighley. This referral is for a determination of Mr Senior's liability to pay those charges that are the subject of the application.

16. The Tribunal has directed that all matters be determined together. For the purposes of the applications the Respondent is Ferncedar Management Company Ltd.

17. The application relates to service charges for the Properties for 2009-2013.

18. Directions were issued on 16th May 2013 providing for the filing of bundles and expert witness reports and provision made for a hearing.

19. Jeremy Varley filed the original application but the other Applicants subsequently applied to be included within the application, which was granted and thereafter amended directions were given.

20. An application was made by the Respondent in relation to Paul Singleton and Gillian White in that they had previously been the subject of court proceedings relating to unpaid service charges in which an order had been made at Northampton County Court on 22nd October 2011 giving judgment for the non-payment of service charges up to and including the 30th November 2010 and estimated charges to 31st May 2011. The First-tier Tribunal therefore determined that it could not deal with any service charges prior to 30th November 2010, given the prior determination by the Court, but that it could do so in respect of any subsequent period, including those to 31st May 2011, given those charges were estimated.

21. A hearing date was fixed for 1st and 2nd May 2014.

22. At the hearing the Tribunal directed the filing of further evidence to clarify issues raised at the hearing and also gave permission for the Respondent to file an application pursuant to section 20ZA of the Act and for the leaseholders of the properties at Woodcote Fold time to respond.

23. The Tribunal re-convened, without the parties, to make a final determination on 31st July 2014.

Inspection

24. The Tribunal inspected the Properties in the presence of the Applicants and a representative of the Respondent.

25. The Properties form part of a development comprising four blocks of either houses or flats. On the site there is also a converted mill known as Goose Mill but that is managed by a separate company, Goose Eye Mill Management and does not form part of the application. However, some of the service charges are common to both and are apportioned. Where this applies 16/45ths are charged to Goose Eye Mill and 29/45ths are charged to the Respondent. The only exception to this is in respect of the Pump House. This serves 23

properties of which 16 are charged to Goose Eye Mill Management and the remainder to the Respondent.

26. The Tribunal inspected the common parts within the development. The Applicants stated that the stairwells of the blocks of flats were not cleaned which the Respondent's representative confirmed. It also had sight of an electricity cupboard within one block that was unclean and was said to be prone to flooding.

27. The Tribunal also saw the pumping station responsible for emptying the septic tank for the development. The tank is used by Woodcote Fold and Goose Eye Mill, but also a local public house and other nearby houses. It was advised there had been remedial work on the pumping station in order to improve its efficiency.

28. The development was not complete. The Tribunal was advised that the developer, Northviews Limited, was building a number of houses on the site and that was likely to be completed in a number of weeks. Until completion of the site, parking spaces would not be allocated.

The Leases

29. The Leases under which all the Properties are held are said to be in similar terms. The Tribunal had sight of that relating to Unit 32B, Flat 3 Woodcote Fold, owned by Mr Varley.

30. The Lease is made between Northviews Ltd (1), Jeremy Varley (2) and the Respondent (3). The Property was purchased in 2007.

31. The provisions relating to the payment of the service charges are as follows:

- Clause 28 states "The Service Percentage" means such fair and equitable percentage as the Management Company may notify in writing to the Tenant from time to time.
- Clause 8 states " The Management Company hereby covenants with the Landlord and (subject to payment by the Tenant of the Service Charge when due) as a separate covenant with the Tenant at all times throughout the Term to provide the Services in accordance with Schedule 6.
- Schedule 6 provides for the Respondent to provide the services in Part 2 of the Schedule and that it "may " provide those set out in Part 3.
- Part 2 of the Schedule provides for the maintenance of the septic tank and sewage disposal system, provision of utilities to the common parts, disposal of waste, providing staff to carry out maintenance and leaning, maintaining and repairing the common parts and floodlighting the exterior of the building of the development.
- Clause 4.2 also provides for the payment by the Tenant of insurance effected by the Landlord pursuant to clause 7.2
- Clause 7.2 provides for the Landlord to be responsible for the insurance of the development.

The Law

32. (1) Section 27A(1) of the 1985 Act provides:

An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

33. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

34. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.

35. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

36. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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

37. When considering the reasonableness and payability of any service charge the Tribunal must also consider whether all statutory requirements have been fulfilled. This is in respect of any "qualifying works".

38. Section 20 of the Act provides:

> (1) *Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7)(or both) unless the consultation requirements have been either-*
>
> *(a) complied with in relation to the works or agreement, or*
>
> *(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal*
>
> *(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement*
>
> *(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount*

39. The Service Charged (Consultation Requirements) (England) Regulations 2003 specify the amount applying to section 20 qualifying works as follows:

> 6. *For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250*

40. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented then an application can be made to a tribunal pursuant to section 20ZA of the Act.

41. Section 20ZA of the Act provides

> (1) *Where an application is made to a tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works, or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements*

42. When issuing a demand for the payment of service charges, the terms of section 21B of the Act must be complied with. This requires the demand to be accompanied by a summary of rights and obligations and, until such time as those are supplied, any tenant is entitled to withhold payment of the service charges.

43. Section 21B of the Act provides

> *(1) A demand for the 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*

(2) *The Secretary of State may make such regulations prescribing requirements as to the form and content of such summaries of rights and obligations*

(3) *A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand*

(4) *Where a tenant withholds a service charge under this section, any provision 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*

The Hearing

44. The Applicants attended in person and their spokesperson was Mr Varley. Mr Neil Cullen and Mr David Rothera attended on behalf of the Respondent.

45. It was agreed at the outset of the hearing that the Applicants' claims had issues common to them all and consequently would be dealt with as such unless any particular issue arose for any individual property.

46. The issues to be determined were-

- whether section 21B of the Act (as inserted by section 153 of the Commonhold and Leasehold Reform Act 2002) had been complied with. The Applicants stated that no summary of rights and obligations had been served.
- the allocation of the percentage charge for the service charges for each property
- the charges made for insurance, cleaning, grounds maintenance, legal fees, pumping station and the water treatment plant
- the management fees
- whether the charge made for legal fees was limited by s 20B of the Act
- the charges made for the late filing of accounts at Companies House

47. During the hearing the Tribunal raised with the Respondent whether works undertaken to the water treatment plant required compliance with s 20 of the Act and that also became an issue for determination.

Compliance with S21B of the Act

48. The Applicants stated that when the Respondent had sent demands for the payment of service charges, none had been accompanied by a Summary of Rights and Obligations as required by s21B of the Act.

49. The Applicants accepted that they had now received the necessary summaries, the date of receipt being 21st August 2013. This was after the filing of the original application by Mr Varley in April 2013.

50. The Respondent advised that the development was being built between 2007 and 2009. Some services provided within that period had not been charged for. In 2009 demands were sent by Stead Robinson, accountants, who issued a letter dated 15th October 2010 advising what service charges were due and requesting payment by 30th November 2010. It was accepted that necessary summaries had not been enclosed with this letter. The Respondent could not provide an explanation why the statutory requirements had not been met but that they had been relying upon their professional advisors.

51. Further service charge demands were re-issued against all the Applicants in 2013. Again, the Respondent conceded the necessary summaries had not been included in those demands but were sent out at a later date, 21st August 2013.

52. It was agreed at the hearing by all parties that the date for compliance with s21B of the Act was 21st August 2013.

Allocation

53. In the schedules of service charges filed by the Respondent, each of the Properties had allocated to it a percentage of the service charge it was liable for. The Tribunal raised with the parties that the allocation appeared to be incomplete, namely that the total amounted 98.23%.

54. The Respondent advised that because the development was incomplete the allocations were presently amended to allow for this, thus giving each Property a slightly higher liability in respect of their share. Once the development was complete, then those shares would be changed. Thus, for example, 44 Woodcote Fold had an original allocation of 4.413% but was currently liable for 5.301%. Those properties not yet built have a nil allocation.

55. The disposal of waste on the site works on gravity. However, some of the properties are below the treatment plant and therefore have the use of the pumping station. It was confirmed that only those properties using the pumping station pay for it, each of those contributing equally to the charges.

Insurance

56. The Applicants stated that, save for one invoice, none had been produced for the insurance of the properties and concern was expressed as to whether or not insurance was in place. Charges were made every year and had increased significantly over the life of the complex. No insurance schedules had been provided, despite requests for them to be produced. The schedules were, however, available at the hearing.

57. In evidence, the Respondent confirmed that all the insurance charges related to the complex and not Goose Eye Mill.

58. The Applicants referred to the differences on the insurance schedule for 2009/10 and the amounts charged within the accounts. The schedule shows a charge of £4725.15 whilst the amount in the accounts is £5288.13.

59. The Respondent advised that the insurance premiums were paid monthly to assist the cash flow for which credit charges were made. These charges were included within the accounts but were not shown on the insurance schedules. The Respondent produced an e-mail from the insurance brokers to show how the insurance payments were made up, identifying which element was the premium and which the credit charges.

60. The Applicants expressed concern that, in earlier years, the insurance charges were shown separately in the service charge demands, making them easier to identify. Thus, where there were disputes over payment, those Applicants who wished to, could make a payment for this element of the service charge. One Applicant, Anna Nikacevic, complained that when she had asked for the charge to be identified the Respondent had made an administration charge of £25.

61. The Respondent confirmed that the insurance charge was no longer identified within the service charge demand to prevent the leaseholders from choosing which element of the service charge to pay. Previously leaseholders had paid the insurance premium, but not other charges.

Waste Disposal

62. Within the accounts, separate charges are made for "Sewage and Topwater", "Septic Tank Maintenance", Septic Tank Rework" and charges made for the Pumping Station.

63. Topwater is the collection of rain into a holding tank via gullies. The tank is cleaned once a year and the gullies bi-annually. The charge for this is to cover these costs and is shown as a separate item on each leaseholders account. Each leaseholder is charged £150 per annum.

64. The Respondent was unable to advise the Tribunal how this charge was calculated.

65. The Pumping Station serves 23 properties at the development both at Goose Eye Mill and those managed by the Respondent. The costs were apportioned, there being sixteen properties within Goose Eye Mill and the remainder within those managed by the Respondent

66. The Tribunal noted that whilst most of the Applicants challenged this item within their application, the charges only related to some of the properties.

67. The Respondent advised that the charges for the Pump House provided the pump to be removed and cleaned every quarter. There were significant problems because of inappropriate items being disposed of.

68. KCS is the company employed to service the pumping station and the Tribunal was given copies of the invoices for the quarterly service, in the sum of £70. This is recharged by NAC Associates Ltd to the Respondent in the apportioned sum of £46.00.

69. The charges for Septic Tank Maintenance relate to the emptying and maintenance of the septic tank serving both Goose Eye Mill and the subject development.

70. The Tribunal established that the tank also serves the local public house that makes no contribution towards its maintenance or the emptying of it. The Respondent advised that when originally developing the site planning permission had been granted on the condition the existing sewage system, installed by the public house, was upgraded. The agreement inherited by the Respondent was that the public house only contributes to the maintenance and upkeep of the pipes connected to the treatment plant and not to the plant itself. The public house makes a contribution of approximately £300 per annum. The deeds governing their contribution only allow an increase of 2.5% every 5 years. Some other houses near to the pub also use the septic tank, under a similar arrangement, paying a contribution of £60 per annum. The Applicants had not been aware of this arrangement prior to the hearing nor when purchasing their properties.

71. The Applicants expressed concerns regarding the emptying of the tank. Until recently, the Applicants stated a local farmer emptied the tank transporting the waste to his slurry tank and was then seen spreading the same on his fields. Concerns were expressed as to whether the farmer was suitably licensed to undertake this work and, further, that the charges made for this service were unreasonable.

72. The Respondent confirmed that a local farmer was employed to dispose of the waste; there were a limited number of people available to deal with it. A licence was not required. However, in 2013 a different firm, Whitelocks, had been employed to empty the tank and flush it out. The firm had been changed due to pressure from leaseholders.

73. The Respondent advised that when the septic tank was installed its capacity was for 200 properties. Certain alterations have now been made which will increase its capacity and will be more than adequate for the properties it serves.

74. The Applicants advised the Tribunal of continuing problems with the sewage system throughout its life. Indeed, Mr Sissling, the owner of the property immediately adjoining the tank site, advised that he had been unable to sit outside his property for a number of years because of the smell emanating from it.

75. In February 2013, the leaseholders complained to the Environment Agency because of ongoing concerns regarding the smell emanating from the plant. It contacted the Respondent and took samples from the site both in March and June 2013.

76. The Tribunal had sight of documents from the Environment Agency expressing concern that the level of contamination in the water passing through the treatment plant and then into the nearby stream was too high, indicating that the treatment plant was inadequate. The Applicants alleged the plant had never been sufficient for its purpose. The Respondent stated

that the usage of the tank had increased since it was installed, largely from the public house. It had constant problems with the plant but this was largely due to the users putting inappropriate items into it, for example nappies. The Respondent did concede that some of the waste products could be coming from those properties outside the complex. The Environment Agency had issued a further permit for the plant, in December 2013, subject to it being upgraded.

77. There had been meetings on site between the Respondent and the Agency, resulting in an agreement what remedial work was required to reduce the contamination levels.

78. The Respondent explained that the original system comprised of two tanks. A holding tank has now been installed as an extra filter and to stabilize the flow of waste allowing for a greater standing time, thus producing a cleaner discharge. It was now looking at installing a polishing plant to improve the discharge further.

79. The Tribunal was advised that the local farmer charged £100 per load when emptying the tank. No invoices were available for these charges and whilst the Tribunal directed that invoices were filed, in readiness for the second day of the hearing, the Respondent was unable to do so. An invoice dated 8th February 2102 was subsequently filed, in the sum of £1680, but this did not show how the amount had been calculated. The charges made by Whitelocks were higher and, on the second day of the hearing, the Respondent was able to produce invoices relating to their charges. Their charges varied, dependent upon the amount of waste removed.

80. The Tribunal noted that the invoices for Whitelocks were charged through NAC Associates Ltd, a company owned by Neil Cullen, the major shareholder of the Respondent company. At the hearing Mr Cullen said that this was because the Respondent had insufficient monies to pay the invoices.

81. The Tribunal noted that there were additional charges relating to Whitelock's invoices from NAC Associates Ltd. Mr Cullen explained that when emptying the tanks, his company supplied additional workmen to assist. The amount of their charges varied but it had supplied up to three men and equipment.

82. Some of the charges for the work to upgrade the sewage plant had been charged in the year 2012/13 and amounted, for that year, to £8664.94. The Respondent confirmed that this was the apportioned costs for the work, 29/45ths. The remainder had been charged to Goose Eye Mill. The total cost of the work had been estimated at £11205, although those costs had been exceeded. Further work is yet to be charged for the works.

83. The Respondent had stated in evidence they were to charge the cost of the remedial works equally between the 29 properties. This, on the estimate, would not give rise for the need to consult given their respective contributions would be £249.02, less than the £250 required for the consultation process. The Tribunal noted that this appeared to be an artificial step, given that each of the leaseholders would normally pay according to their allocation. If the leaseholders paid in accordance with their respective allocation, then the

largest contributor, at 6.868% would be required to pay £495.98, thus requiring compliance with s.20.There was no evidence, on the service charge demands sent to the individual leaseholders, that the major works had been charged other than in accordance with the usual allocation.

84. The Tribunal raised with the Respondent whether the remedial works qualified as major works requiring consultation pursuant to s.20 of the Act. The Respondent acknowledged that no consultation had been carried out prior to the commencement of the work, the Respondent not considering it to be necessary.

85. The Tribunal queried whether the Respondent had considered an application pursuant to s20ZA of the Act. The Respondent stated that there had been insufficient time to make such an application, the Environment Agency requiring any remedial work to be undertaken within 24 hours. If the work had not been completed, the waste plant would have been closed.

86. The Tribunal noted that, upon further enquiry, the claim that work had to be undertaken within 24 hours was exaggerated. When the Agency first attended in March 2013 and it had required work to be done it had not sought to re-inspect until June of the same year. At that time, although the discharge did not meet their standards, they allowed the Respondent until 10th September to remedy the situation. The Respondent confirmed that further works had been carried out as required and a further inspection was due two weeks following the hearing. It was unknown at the time of the hearing whether the remedial work had been completely successful.

87. The Applicants queried whether any claims had been made under any guarantees relating to the development. There was an architect's certificate valid for 6 years but no claims had been made under those guarantees.

88. The Respondent confirmed that no claims had been made because the experts they had consulted had advised that the deficiencies in the plant was caused by the items put down it by the various leaseholders. This was the cause of the problem and not a deficiency within the plant itself.

Accountancy

89. The Applicants expressed concerns that charges were being made for the late filing of returns at Companies House. Further, no invoices for the charges made by the accountants for years 2009-2012 had been produced.

90. The Respondent provided copies of the invoices within their Tribunal bundle. An issue then arose regarding the narrative within the invoices referring to advice for capital allowances and whether that was charge to be paid by the leaseholders. The Respondent was unable to answer this query.

91. The Applicants queried that the charges for 2009 and 2010 were significantly higher than in later years, the charges being £3466.25 and £3720 respectively. In later years they approximated at £1700.

92. The Respondents confirmed that in 2009 and 2010 the accountants dealt with the issue of the service charge demands and consequently there was more work during those periods.

93. The Applicants also raised an issue that the accounts were not audited, as required by the lease. The Respondent advised that a decision had been taken that until the company's turnover exceeded £50,000 the accounts would not be audited in an attempt to reduce costs. It was confirmed that this decision had been taken in 2005 at a meeting held with only Mr Cullen as the only shareholder.

Cleaning

94. The Respondent confirmed that no cleaning had been carried out at the site since September 2012 and consequently there were no cleaning charges. There were complaints regarding the standard of cleaning and the various leaseholders had refused to pay the charges. The only cleaning carried out was to the stairs in Block G and that was paid for by the leaseholders in that block.

95. In 2009-2010 the cleaning charges were £217.68 charged by NAC Associates to the Respondent. The Respondent advised that the charges were based on 2 visits per month at £60 per month. This invoice was for 6 hours labour plus the use of a carpet cleaner. The Tribunal noted that the invoice from NAC Associates charged VAT at 20% whilst, at the relevant time VAT was chargeable at 17.5%.

96. The Applicant, Mr Cooper whose property is in Block G, disputed that any cleaning was carried out at all during this period.

97. In 2010-2011 the charges for cleaning amounted to £864 plus an additional £36 for cleaning windows. The cleaning charges remained at £60 per month.

98. In 2011-2012 the applicants stated one tenant did the cleaning in return for which her rent was reduced. The Respondent denied this stating the tenant was paid £60 per month. The charges for this year were £648 including VAT, apportioned for the year upon the basis there was no cleaning after September 2012. The Applicants alleged that any cleaning took no more than 10 minutes on each occasion.

99. The Respondent confirmed that there was no schedule/time sheet for the cleaning.

Management Charges

100. The Applicants stated that the charges for 2010-2012 were £2500 plus VAT in each year. Mr Rotherha undertook the role of manager but was employed by NAC Associates Ltd.

101. The Respondent confirmed the charges of £2500 plus VAT were paid to NAC Associates Ltd and that the charges were reasonable for the work undertaken. In the past year Mr Rotherha advised he had received 1017 requests from leaseholders that he had had to deal with. If the role was outsourced the costs

were likely to be higher; the cheapest quote obtained was £170 plus VAT per unit. The current charges amounted to £103.45 per unit, inclusive of VAT.

102. The charges had increased from earlier years because in those years there was still an office on site that could deal with any queries.

103. The Applicants stated that Mr Rotherha was often out of the country and consequently was difficult to contact. Further, the Applicants did not consider he had the expertise to deal with the management role.

Solicitors Charges

104. In 2011-12 the solicitors' charges were £500 and the Applicants sought an explanation for this.

105. The Respondent confirmed that legal advice was sought when the leaseholders made a Right to Manage application, an application that was unsuccessful.

106. The Applicants advised this had been made due to their inability to resolve issues with the Respondent. Meetings had been arranged to which Mr Cullen had been invited, but which he then failed to attend. When a meeting did take place it was a forum for debt collection by Mr Rothera, rather than one to resolve any issues.

107. Mr Rotherha, for the Respondent, explained that because the service charge was not being paid by some of the leaseholders, the matters about which they complained could not be addressed, due to a lack of funds.

Miscellaneous invoices

2009-2010

108. The Applicants challenged a number of other invoices within this year.

109. An invoice for landscaping in the sum of £177.30 was charged in this year. No invoice was produced but the Respondent stated this work usually involved cleaning up and controlling weeds.

110. In the same years there were two invoices from Paul King in the sums of £120 and £265. Only the invoice for £120 was available and referred to work at the pumping station. The invoice had been charged to the Respondent when it should have been apportioned with Goose Eye Mill. There was no evidence to show that the second invoice had been apportioned.

2010-2011

111. The Applicants challenged an invoice from Travis Perkins for £518.51 for materials.

112. The Respondent stated this was to rebuild a stone wall which had collapsed and to erect a temporary fence to the building site. The building site was

within the complex where other properties were to be built but which were still under construction at the date of the hearing. The wall was to the rear of the building site. The Respondent stated it had collapsed because children had been climbing on it. The Applicants alleged the wall had been rebuilt by someone who did not know how to dry stonewall and it had collapsed after 12 months.

113. There was a charge by NAC Associates Ltd for the repair to fencing, charged at £289.44. The Respondent said this was for the erection of fence panels to the rear of Block G and was put in to separate this block from the others. It provided a "disembarkation line". The Applicants challenged this saying the fencing was held together with blue rope and was to prevent entry onto the development site.

114. Mr Cullen did not accept that the erection of the fence, to cordon off the building site, was a development cost that should not have been included within the service charge.

115. In the accounts there was a charge of £44.50 described as "Landlords Water". The Respondent advised that this charge was made by NAC Associates Ltd due to one of the tenants using a tap provided for the building site for washing his car. The tap was on the development site and consequently was not for the benefit of the leaseholders. Mr Cullen conceded this charge should not have been made.

116. NAC Associates Ltd charged the Respondent £300 for gardening during this year. The Applicants stated that no gardening was carried out. The invoice referred to the repair of a site tap. Mr Cullen accepted that this tap was not for the benefit of the leaseholders and its repair should not have been charged to them.

117. The Applicants challenged three invoices from NAC Associates Ltd, in the sums of £227.99, £165.43 and £385.19 respectively, all dated for 31st December 2011. The charges were for the hire or re-hire of power washers. The Respondent advised that jet washing was done twice per year. All the flagged areas were washed after weeding.

118. The Applicants did not accept that the power washing had been done as stated. It was maintained that the power washers were used to clean Mr Cullen's driveway, his property adjoining the complex.

119. Mr Rothera accepted that only two of the invoices should be charged for, those being for the sums of £227.99 and £385.19. These related to the hire of power washers for the cleaning of the septic tank.

120. There were two invoices in this year for the same amount, £321.82, being invoices from NAC Associates Ltd for a blockage in the pump station. Mr Cullen conceded that only one of these invoices was a duplicate and should not have been charged.

121. There were two invoices charged in this year. Both were for pump station blockages and charged in the sums of £98.60 and £570.43. The Respondent

conceded that these invoices had also been charged in the following year and should therefore be removed from this year.

2011-2012

122. NAC Associates charged £102 for "Bankings and General Area". There was a further invoice for gardening in the sum of £679.44. The parties were in dispute as to whether this work had been carried out.

123. In this year there was a charge of £5928.00 by NAC Associates Ltd for emptying the septic tanks. This was the charge made by NAC Associates Ltd for providing workmen to assist with the emptying of the tanks at a time it was done by Sugdens. The Respondent advised that the emptying of the tanks required supervision in order to comply with health and safety requirements. The supervisory work was charged at £2560 plus VAT, in the total sum of £3072.00.

124. Within the accounts a charge of £551.65 by NAC Associates Ltd is described as "Floodlight Inc teleporter hire" and is marked as an accrual. Mr Cullen confirmed that this account has not been paid because the repair was ineffective. A new spotlight has been re-sited and no charge has been made for that. The Applicants advised that the repair was disputed in any event.

125. The Applicants disputed an invoice from NAC Associates Ltd for £111.13 for a damaged water pipe. The Respondent was unable to confirm to what this referred.

126. The Applicants queried two invoices, the first in the sum of £1488 described as "Rebuild walls and replace flagstones. The second, in the sum of £1340 was for "Supervision of works". Both invoices were from NAC Associates Ltd.

127. The Respondent explained the first invoice was for the repair of a dwarf wall damaged by vehicles on the complex. Of this sum £180 was for materials, the remainder being for labour. Mr Cullen could not provide further details of the charges, accepting that they appeared high.

128. The Respondent included within the year a charge against future costs for the motor in the treatment plant in the sum of £1200. The Respondent advised that, at some future date, the motor would require dismantling and rebuilding, the exact cost of which was, as yet, unknown.

129. In this year a charge was made for the late filing of the Respondent's return to Companies House in the sum of £375. The Applicants submitted that this was not something that should have been charged. It was unreasonable to charge this. The Respondent had an obligation to ensure the returns were filed on time and the cost of failing to do so should not be passed onto the leaseholders.

130. The Applicants challenged charges of £216.60 for power washing pathways. It was denied that this work had been done.

2012-2013

131. The Applicants challenged a charge of £159.60 for the replacement of light bulbs. It was disputed that the bulbs had been replaced. The Respondent confirmed that some bulbs had been stolen and had been replaced. The Respondent was unaware that the bulbs were not working.

132. An issue had arisen between the Respondent and the owners of 50Woodcote Fold, Mr & Mrs Sissling. Rendering to the outside of their property had begun to fall off. The Respondent charged £132.00 to remove the falling rendering, the invoice stating the work had taken 4 hours. Mr & Mrs Sissling advised that due to the Respondent failing to address the issue adequately they had paid for the rendering to be repaired at a cost of £120. This had taken 2 days. In the light of those charges, the amount invoiced by NAC Associated to the Respondent was excessive.

133. The Applicants challenged two invoices from independent contractors, Hardaker, for £500 and £600. This was for work to the TV satellite system. They appeared to be for the same work, although there was no invoice relating to the second charge. The Respondent advised the invoices were for two separate items of work.

134. A charge of £83.51 was included for the clearance of the topwater gullies. The Respondent conceded this item should not be included. It was part of the separate charge of £150 charged to the leaseholders in each year.

VAT

135. The Applicants noted that some of the invoices from NAC Associates Ltd charged VAT at the incorrect rate. VAT was being charged at 20% when the rate applicable at the relevant time was 17.5%

s20C application

136. The applications included one that an order be made pursuant to s20C of the Act, thus preventing the Respondent from including their costs within the service charge.

137. The Respondent opposed the application stating that they had endeavoured to resolve matter without recourse to the Tribunal.

Further applications

138. At the conclusion of the hearing the Respondent was given permission to file an application for dispensation pursuant to section 20ZA of the Act in respect of the major works to the sewage treatment plant within 14 days of the hearing. The Applicants had permission to file a response to the application. A determination would then be made without the further attendance of the parties.

s.20ZA application

139. The Respondent filed the application for an order pursuant to s20ZA for the Tribunal to grant retrospective consent to dispense with the consultation requirements of s.20 of the Act. The Application was opposed by some of the Applicants.

140. The statement filed by Mr Cullen on behalf of the Respondent again provided the history of the difficulties experienced with the treatment plant. He confirmed the Environment Agency had become involved in February 2013 following a compliant by a leaseholder. Thereafter the Environment Agency had contacted the Mr Cullen, taken samples but had agreed to await further action until the bi-annual check, due in June 2013 had been carried out.

141. The June check revealed a deterioration in the water samples, resulting in a specialist firm being instructed to undertake a specification for the necessary remedial work. It recommended the installation of a new holding tank.

142. In June 2013 the Agency advised the discharge licence originally granted in 1989 had never been assigned from the original developer, Northviews. The Agency allowed until September 2013 for the remedial work to be carried out.

143. In the statement the total cost of the works included those of the subcontractors required to carry out specialist work. The remainder was to be done by NAC Associates Ltd. The reason for this was that there was no money for the Respondent to pay any other contractor.

Decision

144. The Tribunal determined the various issues as follows:

s. 21B of the Act

145. In evidence the Respondent accepted that, when sending the service charge demands, they had failed to comply with the requirements of s21B of the Act. The Respondent had only complied with the Act when sending their letter dated 21st August 2013. Until that date, none of the Applicants were obliged to pay their service charges. The Tribunal therefore observed that county court proceedings for the recovery of service charges against Mr Senior and also against Mr White and Miss Singleton should not have been issued, since, at the relevant date none of those parties had a liability to pay their service charge. The proceedings against Mr Senior had been commenced on 9th January 2013 and against Mr Singleton and Miss White in 2011, both being before the compliance date.

Insurance

146. The Tribunal noted that the amounts charged in the service charge accounts did not correspond to the amounts charged on the insurance schedules.

However, the Respondent had explained the credit charges and the Tribunal did not consider it unreasonable that the premium was paid by installments.

147. There was no evidence produced to show the premiums charged were unreasonable. The insurance was effected through a broker. The Tribunal determined the insurance premiums to be reasonable.

Top Water charges

148. The Respondent stated in evidence that a charge of £150 was made to each of the leaseholders for the provision of the draining of topwater and the cleaning of gullies. The only information available as to how this amount was calculated was by the provision of invoices on the second day of the hearing.

149. The Tribunal noted that despite the evidence given, the amount charged to the leaseholders varied from year to year. In 2008-2010 the charge had been £140, in 2011 the sum of £150, in 2012 the sum of £154.50 and in 2013 the sum of £184.59.

150. The Respondent had provided invoices from KCS, the firm employed to deal with the topwater services, whose invoices were for the same amount throughout the years. They charge a total of £2649.96 per annum, equating to £441.66 per visit, six times per year. These charges are apportioned between Goose Eye Mill and the subject complex, giving a charge to each property of £58.89.

151. The Respondent subsequently filed further copy invoices from Paul King showing invoices for "water tank maintenance" and other call out charges. These amounted to £670 in 2011-2012 and £865 in 2012-13. This would give rise to a further charge to the Respondent, upon apportionment, of £431.78 and £557.44 respectively.

152. In evidence Mr Cullen confirmed that for each visit to the complex, NAC Associates Ltd provides additional labour and equipment as may be required.

153. The Tribunal did not consider it reasonable for there to be a charge to the leaseholders for this service that could not be justified. The amounts charged were in excess of the invoices provided. It suggested that NAC Associates were charging more for their supervision of the drainage and clearing of the top water than the specialist firm employed to do the actual work.

154. The Tribunal considered that it was questionable whether any supervision was required, but nevertheless determined that an allowance should be made for one supervisor at a rate of £100 per visit plus VAT. This would give rise to a charge of £720 per annum for both developments. In the event equipment was provided this should be at a cost no greater than £250. The apportioned amount, for the subject complex, would therefore be in the sum of £2332.86.

155. In the years 2009-2010 and 2010-2011 the charge for topwater is be reduced to £85 per property per year.

156. In subsequent years there were additional charges and therefore for the years 2011-2012 the charge would be reduced to £96.00 per year. In 2012-2013 the charge for topwater would be reduced to £100 per annum.

157. In 2012/13 a charge of £83.52 was made within the service charge accounts for the clearing of top water gullies. Upon the basis these charges are independent of the service charge account and form part of the separate annual charge, this should be removed form the service charge.

Pump Station

158. The Tribunal determined that the quarterly maintenance charge made by KCS was reasonable. This had been apportioned with Goose Eye Mill

159. In 2009-2010 there were charges for a contractor and the hire of pumping equipment charged to the Respondent that did not appear to have been apportioned with Goose Eye Mill. The amounts charged total £483.28 and the apportioned charge is £311.45. The charges for that year should be reduced accordingly.

160. In 2010-2011 the Respondent accepted that one invoice had been duplicated in the sum of £321.82 and is amount should be deducted.

161. In the same year it was accepted that two invoices, in the sums of £570.43 and £98.60 have also been charged in the following year and consequently a further sum of £669.03 should be deducted.

162. The Tribunal determined the charges for the remaining years, 2011-13 are reasonable.

Sewage Treatment Plant

163. The Tribunal considered the service charges accounts for 2012-2103 and the items categorized as major works for the remedial work required to the treatment plant. Two items were listed as "Rework" and amounted to £8664.94, comprising of two invoices from NAC Associates Ltd, in the sums of £6444.35 and £2220.59.

164. In items headed "Septic Tank Maintenance" there were further items that the Tribunal determined were part of the major works and not routine maintenance items. These were the costs arising from the work required by the Environment Agency that would otherwise not have been done. There was no evidence of these costs in earlier years to suggest they were done on an annual basis. These costs were fees paid to the Environment Agency, laboratory charges and the fee for the discharge licence. Theses costs totalled £1726.69.

165. The total cost of the major works, in this year, was £10391.63. This was the amount apportioned to the Respondent and consequently the total cost of the work, both for the Respondent and Goose Eye Mill was £16124.94. The largest contribution for this work, based on the apportionment was 6.868%,

equivalent to the sum of £1107.46, thus exceeding the threshold for compliance with the requirements of s.20.

166. The Tribunal determined the major works should have been subject to consultation in accordance with s.20 of the Act. It did not consider the estimate originally used by the Respondent was an accurate reflection of the true cost of the work. NAC Associates Ltd was not independent of the Respondent, by virtue of Mr Cullen's interest in both companies and the subsequent cost of the work highlighted the deficiencies in the original quote. The Respondent's submissions to the Tribunal, in support of their s.20ZA application had shown the true cost of the work was significantly higher than the original estimate.

S.20ZA application

167. The Tribunal considered the application subsequently made by the Tribunal for an order pursuant to s.20ZA and the written submissions made in support of it.

168. The Tribunal had some difficulty in calculating the true cost of the major works from the further information provided. Mr Cullen stated the cost of the major works totaled £13970.46 comprising of

Materials (invoices provided)	£13879.24
Whitelocks	£4904.97
KCS and D Webster	£4800
C Happs (Environmental Consultant)	£296.25
Chemical analysis	£90.00

169. These amounts total £23970.46. There is then to be included the charges of NAC Associates Ltd for their work, said to be £5707.61. This is said not to include any supervisory costs but the actual labour costs charged at £20 per hour. The total of the works therefore is £29678.07, an amount far in excess of the original estimate.

170. However, the charges for materials, on the invoices provided, only amount to £2298.64. It is therefore assumed that not all the invoices have been provided. Further, the charges for Whitelocks appear to include those made for the normal emptying of the septic tanks and are not major works. For example, the copy invoice provided is one for the sum of £2465.12, dated for 8th April 2013, prior to the commencement of the major works.

171. Whilst it is said that the charges for NAC Associates Ltd are £5707.61, an invoice is included within the application for £4907.61.

172. Despite an inability to calculate the final cost, the Tribunal relies upon the actual charges made to the service charge for 2012-2103, confirming that a s.20 consultation should have been carried out.

173. The Tribunal determined that it would not grant the application for an order pursuant to s20ZA. In doing so, it considered that there had been sufficient time for the Respondent to make such an application, from June 2013 until

September 2013. In evidence Mr Cullen had said the Respondent had been given 24 hours to remedy the problems, a claim which was not true. The Environment Agency had allowed from June until September to remedy the problems and an application could have been made and considered within that time.

174. The Tribunal also took into account the decision in ***Daejan Investments Ltd v Benson [2013]UKSC 14.*** The Tribunal did not have to take into account the financial implications arising from their refusal to grant the application. The Respondent would suffer from the refusal of the application but that was not, in itself sufficient reason for it to be granted. Secondly, the failure of the appropriate consultation was potentially prejudicial to the leaseholders. There was no independent evidence to show whether the charges made for the works were reasonable, or whether the costs could have been reduced.

175. The Tribunal noted the Respondent's position, in that it did not consider compliance with s.20 was necessary but the Tribunal did not accept that the original quote was realistic, in the light of the subsequent costs.

Major works

176. The major works span two years. The Tribunal considered the decision in ***Phillips v Francis [2012]EWHC 3650(Ch),*** which clarified that landlords are not entitled to argue that various individual elements of work are each separate qualifying works such that the £250 threshold above which the consultation is required s.20 in not triggered. Therefore the major works, although over two years, are one set of works for the purposes of s.20. However, given the works are over two separate years, there is nothing to prevent a charge being made in the second year. Thus a further charge can be made in that year, but limited as before. In his judgment the Chancellor of the High Court stated:

> " Accordingly, all of them [qualifying works] should be brought into account for computing the contribution and then applying the limit. It may be that they should be spread over more than one year thereby introducing another limit"

177. The largest contributor to the major works is 6.868%. The maximum contribution, given the non-compliance with s.20 is £250, thus capping the costs of the major works at £3640.07. The costs, as referred to in paragraph 160 are limited to that sum and each leaseholder will thereafter pay in accordance with their allocation.

178. Whilst the years 2013-2014 are not to be considered within the current application the Tribunal considered that any charges for that year for major works would be limited as in the previous year. They are the same qualifying works.

Accountancy

179. The Tribunal noted that the charges made in 2009 and 2010 had been higher than in subsequent years and had been explained by the additional work undertaken by the accountants in producing the service charge demands.

180. The invoices referred to advice given which could be said to be outside the ambit of the service required by the Respondent. However, it was noted that only a proportion was charged to the service charge. The Tribunal therefore determined that the charges were reasonable.

Cleaning

181. The Tribunal noted there was an issue between the parties regarding the quality of the cleaning which had been undertaken from 2009 to September 2012. However, the Tribunal acknowledged that no charges had been made after September 2012. It determined the charges made prior to that date, in the sum of £60 per month were reasonable.

182. It was noted that the invoices for the provision of cleaning had all had the wrong rate of VAT applied to them. The rate for VAT increased on 4th January 2011 from 17.5% to 20%. All the invoices prior to that date require amending to the correct rate and a credit given to the service charge account for the appropriate years.

Management Charges

183. The Applicants challenged the amounts charged for management of the complex. The Tribunal acknowledged that some aspects of the management were unsatisfactory. However, there was no application before it for the appointment of a manager.

184. The Tribunal noted that the rate charged by the Respondent was significantly below the market rate and also considering the quote obtained for an alternative management company. In those circumstances the Tribunal determined the charges to be reasonable.

Solicitors Charges

185. The charges challenged by the Applicants only related to those charged 2011-12 in the sum of £500. The Tribunal determined that the Respondent was entitled to seek advice at the time of the application for the appointment of a manager.

186. Clause 5.1, Part 1 of Schedule 5 entitles the Respondent to employ such professional services as may be required and to include their reasonable charges within the service charge.

187. The Tribunal determined the charges made were reasonable. No evidence was adduced to suggest a lower figure would have been appropriate.

VAT

188. The Tribunal noted from its own enquiries that the rate for VAT increased from 17.5% to 20% on 4th January 2011. There was no explanation from Mr Cullen, for NAC Associates Ltd, why several invoices to the Respondent were charged at the wrong rate of VAT. The Tribunal therefore determined that the Respondent re-credit to the service charge account the amount of VAT by which it had been overcharged. It was a matter for the Respondent to resolve this issue with NAC Associates Ltd. Their inability to check the accuracy of the invoices, such as to allow them to be over-charged, was not a cost to be borne by the leaseholders.

Miscellaneous Charges

2009-2010

189. The Tribunal considered the invoice for landscaping and determined this to be reasonable. Whilst there was no invoice produced, nevertheless an independent contractor had been employed for this work. The work had been in the early stages of the development and it seemed more likely that work had been done during this period.

2010-2011

190. The Tribunal noted that the invoices from Travis Perkins in this year were for materials to repair the boundary wall and fencing, all within the area yet to be developed. The Respondent gave evidence that the wall had fallen and had been repaired. Although the Applicants stated it was again in need of repair.

191. The Tribunal considered that none of these charges should be passed to the leaseholders. The wall and hoardings were a development cost to be borne by NAC Associates Ltd, as developers of the site. Accordingly none of those costs, amounting to £518.51 should be included within the service charge.

192. In this year there is also a charge by NAC Associates Ltd for the repair of fence panels to the common areas. The Tribunal again determined that this was a development cost and consequently the invoice for the sum of £289.44 should be removed from the service charge. It again was unreasonable that these charges were not considered to be a development cost.

193. The Tribunal noted the charge of £44.50 for the use of water should not have been charged and is therefore to be removed from the service charge account.

194. The Tribunal considered the charge of £300 made by NAC Associated Ltd for gardening. It was noted Mr Cullen accepted that the charge made within that sum, for the repair of a tap should not have been included. The Tribunal considered that the charges in this year should be no more than that charged by an independent firm in the previous year. There was no evidence to show how much time had been expended. Accordingly the invoice is reduced to £117.30.

195. The charges made for the hire of pressure washers totaled £808.61. Two of the invoices appear to relate to the hire of the washers for the cleaning of the septic tank. The Tribunal noted that the Applicants disputed any power

washing of the pathways had been done. The Applicants maintained that the only cleaning was done to Mr Cullen's own driveway. In this, the Tribunal preferred the Applicants' evidence. It accepted the charges for those invoices relating to the septic tank, but did not consider the remaining invoice, in the sum of £165.43 to be reasonable. It was noted that the Respondent had conceded this amount should not have been charged. This sum is to be deducted from the account.

196. The Tribunal noted there were two charges for the repair of a gas leak. One invoice from an independent contractor was for £400. The second invoice was from NAC Associates Ltd in the sum of £222. This included a call out charge of £60 plus VAT and a second charge of £125 plus VAT for attending with the engineer. The Tribunal did not consider it reasonable for the Respondent to be charged for the gas engineer to be accompanied. The engineer was suitably qualified. The Tribunal therefore determined that whilst the call out charge was reasonable the remainder of the invoice was not and would be deducted from the service charge.

2011-2012

197. The Tribunal noted the total charges for landscaping work in this year was £781.44. There was little detail save for the description of "Bankings and General Area" and "Tidy strim, prune and weedkill". The Tribunal considered that, as for the previous year, these charges should be no more than those charged in 2009-2010. The Tribunal would allow £117.30 for each invoice, thus disallowing the sum of £546.84.

198. The charges made in this year for the emptying of the septic tank were all charges by NAC Associates Ltd. In this year Sugdens emptied the tank at a charge of £100 per load. The Respondent provided an invoice to show the charges from Sugdens, for this period was £1400 plus VAT, in the sum of £1680

199. An invoice from NAC Associates Ltd dated 30th November 2011, charged £5928.00 inclusive of VAT. Part of the invoice was the charge by Sugdens re-charged through NAC Associates Ltd. However, when re-charging the NAC Associates Ltd had charged for 17 loads at £140 plus VAT per load. The Tribunal considered this additional levy to be unreasonable. There was no evidence that the company had done anything towards the emptying of the tank. Consequently the charge of £140 per load would be reduced to the amount charged by Sugdens giving a reduction to the account of £1176.

200. On the same invoice NAC Associates had charged the Respondent £2560 plus VAT for providing 4 men over 4 days to clean the septic tank. The Tribunal, having seen the septic tank, considered this charge to be unreasonable. It seemed more reasonable that two men were needed to clean the tank. Accordingly these charges are to be reduced by half giving a reduction of £1536 including VAT.

201. The Tribunal noted that the invoice did not appear to have been apportioned between the subject complex and Goose Eye Mill. The septic tank serves both complexes and there appears no evidence that the charges have been split, the

whole of the charges made by Sugdens having been re-charged. Accordingly this invoice is further reduced by a sum equivalent to 16/45ths, in the sum of £1143.47.

202. The Tribunal noted that the charge made for lighting repairs was described as an accrual. The Tribunal considered it unreasonable that this should be charged either in this year or future years given the repair had been unsuccessful.

203. The invoices for the repair of the wall in the sums of £1488 and £360 were considered to be reasonable. However, the Tribunal noted that a further charge for £1340 could not be substantiated. There was no invoice in support and the Respondent had agreed the overall charge for the work was high. The Tribunal therefore determined that the sum of £1340 should be disallowed.

204. The invoice for the cost of a repair to a water pipe, in the sum of £111.13 could not be substantiated. The Respondent had been unable to confirm to what this referred. Accordingly the Tribunal did not consider it to be reasonable.

205. The Tribunal considered the accrual for the motor rewind charge in the sum of £1200. The Tribunal did not consider this to be reasonable. There was no evidence to show when any charge was likely to be made and what the cost would be. It seemed more appropriate for the charge to be made in the year in which any repair/maintenance work was effected. Consequently this item would be disallowed.

206. The Tribunal considered the charge of £375 for the late filing of the returns at Companies House. It agreed with the submissions made by the Applicants. The Respondent had a responsibility to ensure that all returns were filed on time and could not pass on any late filing charges. The amount of £375 would be disallowed.

207. The invoice for power washing, in the sum of £216.60 and challenged by the Applicants was reduced, the Tribunal considering the amounts charged to be excessive. The invoice stated that the work had taken 8 hours over 2 days. The Tribunal noted the Applicants did not accept any work had been done but the Tribunal considered it probable some work had been done given the invoice charged for materials. The work time was reduced to 4 hours, a reasonable charge being £15 per hour giving rise to £60 plus VAT and materials. The invoice was reduced to £144.60, a reduction of £72.

2012-2013

208. The Tribunal noted the charges made in this year for the replacement of light bulbs on the stairwells in the sum of £159.60. The Applicants denied bulbs had been replaced. On inspection the Tribunal had noted that some of the light bulbs did not work, suggesting that the Applicants were correct in their assertions. This item was considered to be unreasonable.

209. The Tribunal noted the charges made in this year for £132 charged for making safe the rendering to 50 Woodcote Fold. A charge of £137.50 had been made in the previous year for the removal of rendering to the same

property. The Tribunal considered the charges in this year to be unreasonable; the work undertaken in the previous year should have been done to a standard not requiring further work. The Tribunal also took into account the comments made by Mr & Mrs Sissling regarding the cost of re-rendering the property.

210. The Tribunal determined that the charges made by Hardaker for repair to the TV system were reasonable. Whilst no invoice was produced for the sum of £500 at the hearing a copy of invoice was subsequently produced confirming both items of work had been done.

211. The Tribunal noted that in this year there was an accrual charge for electricity in the sum of £350. It was not considered that this charge was reasonable. In all previous years electricity had been charged on an actual basis. The Tribunal did not see why this practice should be changed for no apparent reason. This amount is therefore to be removed from the service charge.

212. In this year the Respondent changed contractors to empty the septic tank. The invoices from Whitelocks were recharged to the Respondent via NAC Associates Ltd. The Respondent produced invoices from Whitelocks amounting to £5562.52, but of this only £4706.62 is for the emptying of tanks. The remainder is for the hire of an excavator. The invoices from NAC Associates Ltd amount to £7312.17.NAC Associates Ltd included within their invoices a charge for providing men to assist in the emptying of the tank. The Tribunal did not consider it reasonable for these additional charges to be made. Whitelocks is a specialist environmental firm employed to deal with the emptying of the septic tank. In evidence Mr Cullen had said that men were provided on site to ensure compliance with health and safety regulations. It seemed unlikely that Whitelocks, or their employees, would be unable to adhere to the necessary regulations in the normal course of their working day. The Tribunal therefore determined that those charges made by NAC Associates Ltd for providing men should be disallowed.

213. The charges made by Whitelocks are to be apportioned with Goose Eye Mill. The amount payable for this item is therefore £3033.75. There is to be added to this sum items charged for the hire and purchase of equipment, referred to in the invoices. These include the excavator hire, in the sum of £855.90 and the purchase of a portable pump in the sum of £120. When apportioned this totals £628.91. The total sum payable is £3662.66, a reduction from the amount charged of £3649.51.

s.20C application

214. The Tribunal considered the application made by for an order pursuant to s.20C of the Act, thereby preventing the Respondent from recovering the costs of the proceedings through the service charge.

215. The Tribunal considered the Respondent could make such a charge under clause 5.5 of the Lease.

216. By s.20C(3) of the act the Tribunal may make such order as it considers just and equitable in the circumstances. The Tribunal noted the Applicants have

succeeded in their application, a significant part of the service charge having been found to be unreasonable. Consequently an order is made pursuant to s.20C of the Act.

Costs

217. In their application for an order pursuant to s.20ZA the Respondent included a claim for costs. The Tribunal had sight of the invoices for advice taken by the Respondent and copy correspondence between the parties including a "without prejudice" offer dated the 7th March 2014. This was sent to each of the Applicants offering to credit each of their service charge accounts with a sum equivalent to 20% of the charges made from 2009-2014. The amounts in question varied according to their allocation.

218. The Tribunal noted their determination was for the years 2009-2013, the charges for 2014 not yet being available. However, the offer made did not exceed the determination made by the Tribunal.

219. Costs within this application are not governed by paragraph 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 given the proceedings were issued before 1st July 2013.

220. The Tribunal did not consider it appropriate that any order for costs be made for the Respondent. They had not succeeded in resisting the applications made.

221. The Tribunal, for the same reasons, decided to exercise its power pursuant to regulation 9 of the Leasehold Valuation Tribunals(Fees) (England) Regulations 2003 (SI 2003 no 2098) and order the Respondent to reimburse the fees paid by the Applicants in respect of the proceedings.

Schedule 1

MAN/00CX/LSC/2013/0070
Properties at Woodcote Fold Oakworth Keighley BD22 0QG

Leaseholder	Property
Jeremy Varley	Unit 32B Flat 3 Woodcote Fold Keighley
Paul Singleton and Gillian White	42 Woodcote Fold Keighley
Helen Hutchinson	Flat 2 3 Woodcote Fold Keighley
Hannah Harwood	48 Woodcote Fold Keighley
Anna Nikavcevic	4 Water Mill Court Keighley
Susan Swaine	36 Woodcote Fold Keighley
Richard Christian, Daniel Cooper and Tobias Neale	Flat 3 3 Woodcote Fold Keighley
Edward Sissling	50 Woodcote Fold Keighley
Lisa Brett	Flat 2 1 Woodcote Fold Keighley
Richard Smith	Flat 28 Woodcote Fold Keighley