

12080



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

Property: The Old Chapel Bennett Street, Liversedge WF15
7ES

Applicants: The Old Chapel RTM Company Ltd
Respondent: Steven Watson
Case number: MAN/00CZ/LUS/2015/0001
Type of Application: Commonhold and Leasehold Reform Act 2002 –
Section 94

Applicant: Steven Watson
Respondent: The Old Chapel RTM Company Ltd
Case number: MAN/00DA/LCP/2015/0002
Type of Application: Commonhold and Leasehold Reform Act 2002 -
Section 88(1)

Applicants: Mr A Dilenardo
Respondent: Steven Watson
Case number: MAN/00CZ/LSC/2015/0105
Type of Application: Landlord and Tenant Act 1985 – Section 27A &
20C

Tribunal Members K M Southby (Judge)
S Kendall (Expert Valuer Member)
B Mangles (Lay Member)

Date of Decision 19 December 2016

DECISION

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DECISION

1. **The sum of £1686.17 is payable by the RTM company to the Landlord**
2. **The sums payable under the service charge for 2011, 2012 and 2013 are as follows:**
 - a. **2011 Management Services = £6092**
 - b. **2012 Management Services = £9908**
 - c. **2012 Landlords services = £3773 + professional fees and disbursements**
 - d. **2013 – No Order**
 - e. **The costs of and occasioned by this matter 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.**
3. **There were no accrued uncommitted service charges on 11 June 2013 and so no sums are due from the Landlord in this respect.**

BACKGROUND

1. This is a property which notwithstanding its relatively minimal size and limited communal areas has been, and continues to be the subject of multiple applications both to the Tribunal and the County Court. Unpicking exactly what live issues are before the Tribunal and are within its jurisdiction to determine has therefore been a significant challenge.
2. The following applications remain before the Tribunal for determination:
 - a. An application from the Old Chapel Management Company under s94 of the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) with case reference MAN/00CZ/LUS/2015/0001.
 - b. The Tribunal also has before it a matter transferred in from the County Court under number MAN/OQC7/WS/2015/001 in respect of costs claimed by the Landlord under s88 CLRA 2002.
 - c. In addition the Tribunal has also recently received a further application by Mr Dilenardo, a tenant and director of The Old Chapel RTM Company, supported by other tenants in respect of the same property under s 27A of the Landlord and Tenant Act 1985 to determine the reasonableness and payability of service charges for the years 2010-2013, under case reference MAN/00CZ/LSC/2015/0105. The Tribunal having directed that the matter be prepared for hearing using a Scott Schedule noted that a number of the items addressed by both parties in the Scott Schedule related to variable administration charges. As the Tribunal has jurisdiction to deal with these charges and both parties had addressed them in preparation for the hearing and at the hearing the Tribunal has also considered these charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

3. Both parties attended the hearing at Bradford Tribunal Centre on 7 and 8 June 2016. Mr Watson and Mr Dilenardo appeared in person as Landlord and Tenant respectively, and Mr Dilenardo also appeared on behalf of the Old Chapel Management Company being a Director of that Company. Mr Dilenardo provided written evidence that the other tenants support his application to the Tribunal.
4. The Tribunal is conscious that this is a matter which has been before the Tribunal and the County Court on numerous occasions, and in which there are several outstanding issues which the parties wish to have resolved but yet which do not fall under the scope of the applications before the Tribunal. The Tribunal has necessarily restricted its determination to those matters directly under its jurisdiction notwithstanding the desire of the parties to address wider disputes, and the desire of the Tribunal to assist in disposing of this matter fairly, justly and expeditiously.

PROPERTY

5. The Property is a former industrial/mill building which has been converted in 2007 into 8 apartments. The communal areas are very limited in scope and straightforward to maintain in terms of size and complexity. The Tribunal inspected the exterior of the Property and the communal parts but did not enter any of the flats.
6. The Property consists of three linked but distinct units:
 - (a) Single Storey Side Building comprising flat 4. This has no internal communal parts and is stated to be currently uninhabitable due to water ingress.
 - (b) Two Storey Front Building containing Flats 3 and 8. This has a very small entrance lobby with carpet and smoke alarms and a main entrance door. The stairs which lead up to Flat 8 appear communal s they are not enclosed but have previously been found by the Tribunal to form part of the demise of Flat 8 making the communal area in this section of the building even smaller than it first appears.
 - (c) Three Storey Rear Building containing Flats 1 & 2 on the ground floor, Flats 5 & 6 on the first floor and flat 7 on the second floor. A communal staircase links the flats and there is a main entrance door, evidence of electric radiators although not all of these were present, smoke alarms and some limited lighting.
 - (d) Externally there is a very limited area of gravel to the side and an area of shared car park to the front.
7. Upon inspection the Tribunal found the Property to be in adequate condition, albeit with radiators absent from the communal stairwell. There was nevertheless evidence that there had been relatively recent cleaning, and services were connected, and the communal areas appeared watertight.

THE LEASES

The Leases for the Properties contained identical terms. The relevant clauses of the Leases were as follows:

- *“The Landlords Services” – the services which the Landlord covenants to provide (or Procure) in clause 5 and the services listed in Part 2 of Schedule 6 which the Landlord may provide in its absolute discretion*
- *“The Management Services” – the services set out in Part 1 of Schedule 6*
- *“Expenditure” – the aggregate of all costs fees expenses and outgoings incurred by the Landlord in providing the Landlord’s Services including bank charges interest and VAT and such sums as the Landlord in its absolute discretion considers desirable to set aside from time to time for the purpose of providing for periodically recurring items of expenditure in connection with the Landlord’s Services whether recurring at regular or irregular intervals and such provisions for anticipated expenditure in connection with the Landlord’s Services as the Landlord in its absolute discretion considers fair and reasonable in the circumstances.*
- *By Clause 2.1.1 and 2.1.2 and Schedule 4 para 2 and 3.1 the Tenant covenants with the Landlord and the Management Company to pay the Service Charge and the Management Charge respectively*
- *By Schedule 4 para 5 the Tenant covenants to pay the Landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in connection with the recovery of arrears of rent...*
- *Clause 5.1 - Subject to the Tenant paying the Service Charge the Landlord covenants with the Tenant that the Landlord will keep the roof foundations Structural Parts and exterior of the Building in good repair and condition throughout the term...*
- *Clause 5.1.2 – In supplying the Landlord’s Services the Landlord may employ managing agents contractors or such other suitably qualified persons as the Landlord may from time to time think fit and whose fees salaries charges and expenses (including VAT) will form part of the Expenditure*
- *By Clause 6.1 the Management Company (and in default the Landlord) covenants to provide the Management Services as defined in Schedule 6.*
- *Schedule 6, Part 1 – The Management Services*
 1. *Provision replacement renewal repair maintenance and cleaning (as the case may be) of*
 - 1.1. *The Common parts*
 - 1.2. *Water and sewerage supplies*
 - 1.3. *Lighting and heating to the Common Parts*
 - 1.4. *Signs (if any)*
 - 1.5. *Fire fighting equipment in the Common Parts (as required by law or as the insurers or the Management Company deem reasonable)*
 - 1.6. *Decorating and furnishing the common parts (if applicable and as the Management Company deems reasonable)*
 - 1.7. *Provide methods for the collection and disposal of waste*

- 1.8. *Cleaning of exterior windows of the Building*
- 1.9. *Any other amenities the Management Company deems reasonable or necessary for the benefit of the Building but excluding in each case any such which are provided as part of the Landlords Services*
- *Schedule 6, Part 2 – The Landlord’s Services*
 - 2. *Maintenance repair rebuilding replacement and renewal of*
 - 2.1. *the main structure and exterior of the Building including all structural or load bearing walls and columns the structural parts of the floors and ceilings and the timbers stanchions girders roof and foundations of the Building*
 - 2.2. *the boundary walls fences and other structures of the Building*
 - 2.3. *the party walls within the Building*
 - 2.4. *the Conduits*
 - 2.5. *all other parts of the Building not included in the above...*
 - 3. *Management Costs*
 - 3.1. *The employment of managing agents contractors surveyors valuers architects engineers accountants solicitors and other professional persons in connection with the management and/or maintenance of the Building and the payment of all proper fees charges salaries expenses and commissions payable to them including the payment of the fees and expenses incurred by the Landlord in preparing accounts of the Expenditure for each Financial Year and having such accounts certified by the Accountant in accordance with clause 5*
 - 3.2. *The payment of a proper management charge in respect of the provision of services for the Building during each Financial Year.*
 - 3.3. *The payment of all proper costs and expenses including bank charges interest and VAT incurred by the Landlord incidental to the provision of services for the Building.*
 - 4. *Statutory Requirements*
The costs to the Landlord of carrying out any works to the Building required to comply with any statute...
 - 5. *Outgoings*
The payment of all existing and future rates (including water rates) taxes assessments charges and outgoing whether parliamentary local or otherwise...
 - 6. *General*
The provision of such other services and works as the Landlord may reasonably deem desirable or necessary for the Benefit of the Building or the tenants or occupiers of it or in the interests of good estate management.

THE EVIDENCE

MAN/OQC7/WS/2015/001 – s88 CLRA 2002 Recovery of Landlords Costs

1. The Old Chapel RTM Company acquired the right to manage the property on the 11th June 2013 from the Landlord and Applicant in this matter Mr Watson.
2. Mr Watson had previously applied to the County Court for judgment in the sum of £1905.17, being costs, court fee and interest claimed by him as Landlord under s88 of CLRA 2002. The County Court quite properly transferred the matter to the Tribunal, in accordance with s88(4). The Tribunal having previously determined that in the absence of a substantive defence from the Respondent reasonable costs were indeed payable to the Applicant now sought to determine what costs were reasonable having requested details of those costs from the Applicant in its previous directions.
3. The Applicant's county court application claims £1686.17 in costs, made up of £949.17 dated 27/3/14 and £767.50 dated 5/6/14. In addition, the applicant claims £104 in interest plus additional interest of £0.36 per day and the court fee of £115.
4. Invoice 25 dated 27/3/14 for £949.17 is addressed to The Old Chapel Management Company and states the invoice is for 'costs incurred in accordance with s88 CLRA 2002 from 3/7/13 to 15/3/14 as per invoice LPM76.
5. Invoice LPM76 is an invoice from Londinium Property Management ("LPM"), being one of the Landlord's companies, and a company of which he is a director. LPM were at that time acting as the Management Company for the Property. The invoice is for £727.50 of administration services as per timesheet and £180 of solicitors' fees. This totals £907.50 not the £949.17 claimed.
6. The timesheet shows 8 hours and 5 minutes of director time at £90/hour and 2 hours 5 minutes of clerical time, being the £41.67 previously unaccounted for.
7. Invoice 28 dated 11/6/14 for £767.50 is addressed to the Old Chapel Management Company and is for costs under s88 CLRA 2002 from 16/3/14 to 15/5/14. It refers to LPM invoice 89 for £767.50 and its associated timesheet which includes 8 hours 25 minutes of work at Director level and 30 minutes of clerical work.
8. It was clear from the evidence of Mr Watson that the Director of LPM who was carrying out the work was Mr Watson himself. It was also clear that of the 16 hours 30 minutes of director time spent subsequent to the handover to the RTM Company, 10 hours 55 is attributed on the timesheet entries to updating or preparing accounts, with a further 55 minutes to document compilation.

9. It is common ground between the parties that handover accounts do not exist. Mr Watson states that this is because it is not his responsibility to prepare them under the terms of the lease. The Tribunal observes that under the lease at clause 5.3 Service Charge Accounts are to be prepared as soon as convenient after the end of each Financial Year. Mr Watson argues that he has no responsibility to prepare mid-year accounts, and that no longer having the responsibility for management after 11/6/13 he has no responsibility to prepare, nor the information with which to prepare end of year accounts.
10. It is clear from correspondence between the parties that Mr Watson sent a significant amount of accounts information to Inspired Property Management who were acting on behalf of the RTM Company. Inspired ceased to have any involvement as from 15/5/14 and it is unclear how much information they in turn passed on to the RTM company at the end of their involvement. Email evidence provided by Mr Watson shows that he subsequently forwarded accounts information to the RTM company.
11. The Tribunal therefore considered whether the costs incurred by Mr Watson were reasonable. It is clear to the Tribunal having examined the accounts information in considerable depth that they are astonishingly complex and opaque for a property of this size.
12. The Tribunal concludes that whilst the time spent was at the very upper end of what could be considered reasonable, the Tribunal does not doubt that work on the accounts was conducted at this time and is legitimately recoverable under s88. However, had Mr Watson brought the claim correctly before the Tribunal in the first place the fee of £115 would not have been payable and therefore this element of the claim is disallowed. The County Court interest element would similarly not have applied and therefore this too is disallowed. The claim for the costs of £1686.17 is allowed. In reaching this conclusion the Tribunal have relied upon the statutory provisions and have not had need to consider the terms of the lease.

CASE MAN/00CZ/LSC/2015/0105 – SERVICE CHARGES AND ADMINISTRATION CHARGES

Service Charges

1. **The Tribunal is asked to determine the following:**
 - a. actual service charges for 2011 (Management Service Charge only; Landlord's Services having previously been determined by the Tribunal),
 - b. actual service charges for 2012
 - c. actual service charges for 2013

2. The parties, at the direction of the Tribunal, had prepared a Scott Schedule in advance of the hearing with the intention of narrowing the issues. The schedule however extended to some 56 pages of items with the comments from both parties being repetitive, non-specific, non-conciliatory and with erratic and inaccurate references to supporting documents. The Tribunal heard oral evidence from the parties on the items referred to in the Scott Schedule at length and has considered this together with the supplementary written documentation with which it has been provided.

Administration Charges

3. The application before the Tribunal was brought under s27A of the Landlord and Tenant Act in respect of Service Charges, however it was apparent that some of the items raised by Mr Dilenardo in the Scott Schedule were administration charges. Mr Watson argues in his statement of case that if any amounts were not regarded by the Applicant as Service Charges then the Respondent would need to make a separate application under the 2002 Act.
4. As these items formed part of the Scott Schedule prepared by and commented on by both parties and therefore both parties had notice of them the Tribunal concluded that it was clearly in the interests of justice and proportionality to deal with administration charges as part of the service charge claim. No prejudice could be caused by dealing with matters which were clearly under consideration by both parties and upon which representations were heard. Given that many of the items queried in the Scott Schedule were invoices for Mr Watson's time charged through his company Londinium Property Management for attending court hearings, indeed the only prejudice that might be caused would be to the Applicant were they to be required to reapply and were Mr Watson to seek to claim his time in dealing with a further application as an additional service charge.

Summary of Rights and Obligations

5. Whilst the demands for administration charges labelled CHAP 1 and CHAP 4 were served separately on the tenants together with a summary of rights and obligations it seems that the remainder of the administration charges were demanded from the tenants through the service charge account, by means of a letter of demand sent with the annual service charge accounts together with a summary of rights and obligations. Mr Dilenardo argues that these charges are therefore not payable as they have not been properly demanded. The Tribunal notes that the wording of paragraph 4 of Schedule 11 of CLRA 2002 requires the demand for payment to be *accompanied by* a summary of rights and obligations and the Tribunal concluded that including the summary with a letter of demand and the accounts was within the scope of this provision. The administration charges are therefore properly demanded.
6. Accordingly, the Tribunal determines that administration charges are within its jurisdiction and deals with them as part of its determination below.

Other Tenants

7. Mr Dilenardo produced at the hearing correspondence from other tenants, Hughes and Black confirming that they wished to be a party to these proceedings and for Mr Dilenardo to act on their behalf. Mr Watson argued that he had not prepared on the basis to deal with invoices in respect of tenants other than Mr Dilenardo. The Tribunal having considered the matter finds that the general principles which it determines in respect of the submissions from Mr Dilenardo are of general application to all tenants without the need to hear specific submissions in respect of each one.

Actual Management Service Charge 2011

8. The Tribunal is asked to determine the Actual Management Service Charge for 2011. To do so the Tribunal examined what the Lease states Management Service Charge comprises. The Tribunal also considered each heading contained within the accounts for the 2011 Management Service Charge. The Tribunal used the certified accounts as the basis for their deliberations because the Tribunal were not able to reconcile the other accounts information, ledgers, day book, or subsequent invoicing in a way which was consistent. The Tribunal therefore has relied upon the accounts as being both signed off by the Landlord as accurate and certified by independent accountants as reflecting the true position at that time.
9. Management services are:
Provision replacement renewal repair maintenance and cleaning (as the case may be) of:
 - a. The Common parts
 - b. Water and sewerage supplies
 - c. Lighting and heating to the Common Parts
 - d. Signs (if any)
 - e. Fire fighting equipment in the Common Parts (as required by law or as the insurers or the Management Company deem reasonable)
 - f. Decorating and furnishing the common parts (if applicable and as the Management Company deems reasonable)
 - g. Provide methods for the collection and disposal of waste
 - h. Cleaning of exterior windows of the Building
 - i. Any other amenities the Management Company deems reasonable or necessary for the benefit of the Building but excluding in each case any such which are provided as part of the Landlords Services
10. As these are the only items which fall within Management Services under the terms of the Lease it follows that any items which have been charged to Management Services which do not fall under one of these categories are not allowable under the Lease. The Tribunal considered the items listed in the accounts on Page 48 of the bundle, being the Management Services 2011 which are set out in full below and also in Schedule 1

Administration Charges.

11. The Tribunal was asked by the Applicant to consider whether Administration Charges fall under Management Services. The Tribunal concluded that they did not, as 'any other amenities that the Management Company deems reasonable' at paragraph 1.9 of Part 1 of Schedule 6 of the Lease specifically excludes any items which are provided as part of Landlords Services.
12. It is the Tribunal's view that Administration Charges as referred to in paragraph 5 of Schedule 4 to the Lease under Tenants Covenants will fall under Landlords Services, being 'Expenditure' of the sort anticipated under paragraph 6 of Schedule 6. Such charges are therefore expressly excluded from Management Services.
13. It is the Tribunal's view therefore that none of the Administration charges charged under Management Services are allowable under the Lease. The Tribunal is therefore not required to determine whether or not these charges for 2012 are of themselves reasonable. The Tribunal is aware that a previous Tribunal has already determined the reasonableness and payability of Landlords Services for this year where administration charges should properly sit.

Cleaning

14. The Tribunal is satisfied that this falls within Management Services. £4092 was charged to the Service Charge Account for 2011. Mr Dilenardo queried whether cleaning should have been fortnightly rather than weekly and stated that he felt £1200 was a more reasonable figure, however he did not provide any alternative quotations other than stating that the RTM company now pays £50 every 2 weeks, being £1300 per year. The Tribunal accepted that weekly was not essential but nevertheless reasonable. Mr Watson provided the Tribunal with evidence that £3384 had passed through the ledger for February to November, and stated that there was £228 for December. He was unable to produce an invoice for January and therefore the Tribunal allows the sum of £3672.

Entry and Alarm System Repairs

15. An invoice for alarm testing for December 2011 was produced to the Tribunal in the sum of £40. No other invoices were brought to the Tribunal's attention for the relevant period. Mr Watson referred to cash book entries, trial balances, a sum of £120 being journalled out of cleaning. Given the amount of time which is reflected in the accounts as having been spent preparing them the Tribunal is surprised that the documentation does not represent the position on this element more clearly. The Tribunal allows the sum of £40 being that which can be substantiated by the invoices presented to it, and disallows the remainder.

Repairs and Maintenance Electrical.

16. The sum of £880 is charged in the service accounts. Invoices to the sum of £960 were produced. The Tribunal received evidence from Mr Watson that by reason of the accounts being dealt with by way of cash accounting the sums did not always match up year on year, but instead sums needed to be carried forwards into the subsequent year. The Tribunal has no reason to doubt the validity of these invoices and the fact that the work was carried out was not disputed. The sum of £880 as charged is allowed in full.

Repairs and Maintenance Other

17. Invoices were produced in respect of key cutting to the sum of £229. The Tribunal considered this both reasonable and reasonably incurred and therefore it is allowed in full.

Utilities

18. The sum of £273 is not disputed

Report Costs

19. The sum of £198 is not disputed.

Management Charge

20. The Tribunal was provided with timesheets for the work done by the Management Company together with certification by the accountants in accordance with the terms of the lease. Mr Dilenardo argued that the costs were excessive for a property of this kind and therefore not reasonable. The Tribunal observes that a determination of Projected Management Services took place on 8 April 2013 before a differently constituted Tribunal who determined £600 for management charges would be reasonable. The Tribunal were not persuaded by evidence as to why the Management charge needed to be significantly higher for this period. Whilst the previous Tribunal decision is not binding the Tribunal finds this to be a reasonable figure given that £2230 has already been allowed for Management Charges Landlords Services for 2011. This in any event represents an overall charge of £353.75 per flat for the management of a very small communal area and the Tribunal considers that for this period anything in excess of this would be unreasonable.

Accountancy

21. The Tribunal were provided with invoices for accountancy for this period and Mr Dilenardo specifically argued before the Tribunal that this sum should have been included within the Management Charge under Landlords Services. The Tribunal having on this occasion been asked to address this specific point, considered the wording of the Lease and in particular paragraph 3.1 of Part 2 of Schedule 6 which specifically covers fees and expenses incurred in preparing accounts and having them certified by accountants. The Tribunal agrees with Mr Dilenardo that these charges fall under paragraph 3.1 and are therefore charges under Landlords Services. Items which form part of Landlords Services are specifically excluded from being charged under Management Services by virtue of paragraph 1.9 of Part 1 of Schedule 6. Accordingly, these charges are disallowed from Management Services. A previous Tribunal has already made a determination of a reasonable and payable sum for Accountancy under Actual Landlords Services 2011.

Sinking Fund

22. This was not disputed.

Interest

23. The Tribunal received evidence from the Landlord that by reason of the non-payment of Service Charge by the Tenants the Landlord was obliged to borrow money in order to continue to fulfil his obligations to provide the services under the Lease. Interest upon these loans was charged to the Service Charge account. The Tribunal observed that despite significant efforts on its part to interrogate the accounts, very few, if any of the figures provided to the Tribunal by the Landlord in respect of interest appeared to be consistent as between the ledgers and the certified accounts. The Tribunal used the certified accounts as the best and most reliable figures upon which to base its determinations.
24. The Lease allows for borrowing at clause 6.2.3. The definitions section sets out a Prescribed Rate of 4% above RBS base rate which in 2011 was 0.5%. This is assumed to be the rate of interest charged to Tenants on unpaid service charge although the Lease is opaque on exactly how and where this rate is to apply. The Landlord has borrowed money from his own connected company at an interest rate of 8%, having chosen this rate as being the statutory rate of interest allowed on county court claims. No evidence was provided to the Tribunal at the hearing of what commercial borrowing rates were at the time from unconnected sources.
25. The Tribunal determined that whilst there is a right under the Lease to incur the costs of borrowing, such costs have to be reasonably incurred. It is not open to the Landlord to borrow money at unreasonable cost to the tenants and it is incumbent upon a Landlord to ensure that steps have been taken to ensure that any such rate is competitive. The Tribunal considers that notwithstanding that the Lease does not explicitly apply the prescribed rate to borrowing in these circumstances, a rate of 4% above base would be reasonable.

26. The Tribunal further considered whether borrowing significant sums was in itself reasonable. The Tribunal observes that just because the Lease allows borrowing to occur does not mean it is necessarily prudent, or the best use of Tenants' money to incur interest charges. However, in the case of the Old Chapel, the Tenants had ceased to pay service charge and the Landlord was therefore in the situation of having to continue to fulfil his obligations under the lease without service charge payments to fund those obligations. The Tribunal concluded that borrowing in these circumstances was reasonable at the lower rate as prescribed in the lease.
27. However, notwithstanding the inherent reasonableness of borrowing, albeit at a reduced interest rate, the Tribunal do not consider that these interest charges can properly fall under Management Services. The Tribunal concluded that they did not amount to 'any other amenities that the Management Company deems reasonable' at paragraph 1.9 of Part 1 of Schedule 6 of the Lease. A previous Tribunal has already determined the sums payable for Landlord's Services 2011 and were not asked to consider interest.

	Schedule 1	
	Actual	Allowed
Management Services Actual 2011		
Admin Charges - rechargeable	923	0
Cleaning	4092	3672
Entry and alarm system	200	40
Repairs maintenance - Electrical	880	880
Repairs & maintenance other	229	229
Painting and decorating	0	0
Utilities	273	273
Surveyor Health and Safety Report Costs	198	198
Management Charge	1906	600
Accountancy	1170	0
Sinking Fund	200	200
Misc	0	0
Interest	199	0
TOTAL	10270	6092

Actual Management Services 2012

28. The Tribunal have again used the certified accounts as the basis for the determination of service charges for 2012. The headings below therefore reflect the headings in those accounts.

Cleaning

29. It is not disputed that cleaning took place for this period. There is some dispute between the parties as to the frequency at which cleaning should take place. The invoices provided to the Tribunal show cleaning taking place weekly at a cost of £50, with monthly window cleaning plus alarm checks at £40. The Tribunal is satisfied that these sums were both reasonable and reasonably incurred.

Entry System and Alarm

30. The Tribunal has been provided with invoices for work to both the entry alarm system and the smoke detection system and accepts that these sums are both reasonable and reasonably incurred.

Other maintenance

31. A variety of invoices were provided to support this figure which has also been certified by the accountants. Mr Dilenardo did not provide any evidence or assertions that the work claimed was not carried out or was carried out to an unsatisfactory standard. The Tribunal concluded that the works done were both reasonable and reasonably incurred and are therefore allowed in full.

Utilities

32. These charges were not disputed and are allowed in full.

Management Charge

33. This was budgeted at £1440 for the year which was determined by a previous Tribunal as being reasonable. The Tribunal does not consider the increase on this budgeted figure to be excessive, given that the building has clearly not been wholly straightforward to manage. The Tribunal has been presented with timesheets and invoices to support the sums claimed which it considered to be reasonable. This amount is therefore allowed.

Accountancy and Administration

34. For the reasons set out above the Tribunal is of the view that these sums are not recoverable under Management Services. They are however considered under Landlords services.

Sinking Fund

35. This was not disputed and is allowed in full.

Cost of Arrears Recovery

36. The Tribunal is of the view that the cost of arrears recovery is not recoverable through Management Services as they do not fall within the definition of Management Services under the Lease. These sums are therefore disallowed from Management Services. They are however considered under Landlords Services.

Interest

37. For the reasons set out above the Tribunal is of the view that interest is not recoverable through Management Services as they do not fall within the definition of Management Services under the Lease. The Tribunal has applied an interest rate of 4.5%, being the rate which it considers to be reasonable but has dealt with this claim for interest under Landlords services rather than Management Services. The sum claimed for interest is therefore disallowed from Management Services.

Management Services Actual 2012	Actual	Allowed
Cleaning	3278	3278
Entry system and alarm	1376	1376
Other maintenance	1069	1069
Painting and decorating	0	0
Utilities	1573	1573
Surveyors Costs	0	0
Management Charge	1612	1612
Accountancy and administration	3158	0
Sinking Fund	1000	1000
Cost of arrears recovery	5704	0
Misc	0	
Interest	871	0
TOTAL	19641	9908

Actual Landlord's Services 2012

38. The Tribunal have again used the certified accounts as the basis for the determination of service charges for 2012. The headings below therefore reflect the headings in those accounts.

Cost of arrears recovery

39. It is clear that only very limited sums have been paid during 2012 by the Tenants by way of service charge. At the same time the service charge increased significantly as the Landlord had a programme of proposed works which he wished to carry out, the cost of which needed to be collected in advance by way of Service Charge. Accordingly, debtors (i.e. unpaid service charge) increased from £4480 at the end of 2011 to £46,643 at the end of 2012. Whilst the Tenants may have had reservations about the management conducted by Mr Watson at that time they are at least to some extent the architect of their own misfortune by failing to pay sums due under the Lease, which thereby in turn have given rise to further charges which are potentially recoverable under the terms of the Lease.

40. Mr Dilenardo argued throughout his submissions that the charge to the service charge account for the recovery of arrears should be zero. However if the Tribunal were not with him on that point Mr Dilenardo argued that the sums invoiced were unreasonably high, being £8973 plus £5704 for Landlords Services and Management Services respectively.
41. The Tribunal was directed to the relevant invoices for arrears recovery from LPM as they formed part of the extensive Scott Schedule. The Tribunal heard representations from Mr Dilenardo that the sums involved were unreasonable and excessive. In particular Mr Dilenardo drew the Tribunal's attention to travel time of 7hrs 20 min driving time at £90/hour plus a further sum charged for mileage and wine at his destination. The Tribunal observed however that the full number of hours recorded on the timesheet did not appear to have been invoiced, as Mr Watson appeared to have written off voluntarily a certain amount of the time incurred on behalf of LPM and therefore billed a reduced amount to the service charge account.
42. Mr Dilenardo also drew the Tribunal's attention to a standard hourly rate of £90 being charged by Mr Watson in his capacity as director of LPM for all work conducted by him, observing that much of it could have been done at a lower clerical rate. The Tribunal were also directed by Mr Watson to the timesheets supporting these invoices which indicated that in addition to time spent the charges also in some cases included disbursements.
43. Mr Watson in return argues that he has an obligation under the Lease to recover sums owing in order to enable him to continue to provide the services. He claims that he is entitled under the Lease to do so, under paragraph 5 of Schedule 4 and that the costs of arrears recovery have been charged to each individual tenant, consistent with this provision.
44. The starting point for the Tribunal is whether the cost of recovering arrears is recoverable under the terms of the Lease. If it is not, then the reasonableness or otherwise of the charges are not relevant. The Tribunal therefore considered the terms of the Lease.
45. It is clear within the Lease that the Tenants Covenants include at paragraph 5 of Schedule 4 an obligation upon the Tenants to pay to the Landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in connection with the recovery of arrears of rent, or incidental to the preparation and service of notices or proceedings.
46. The Tribunal considered whether the Landlord claiming time charges through the medium of a Management Company of which he is director was what the terms of the Lease intended. Clearly fees and disbursements associated with recovering arrears are recoverable. The Tribunal also concluded that had the Landlord instructed solicitors to recover the arrears this would clearly fall within the scope of the Lease. However, whilst the Lease is specific about legal and surveyors' costs being recoverable the Lease does not say that costs of Managing Agents are recoverable under paragraph 5 of Schedule 4 and therefore the Tribunal concludes that they are not.

47. The Tribunal considered whether arrears recovery could fall under the General provision at paragraph 6 of Part 2 of Schedule 6, which allows for the provision of such other services and works as the Landlord may reasonably deem desirable or necessary...or in the interests of good estate management.
48. The Tribunal considered whether it could be reasonable for a Landlord to deem it desirable, necessary or in the interests of good estate management to appoint managing agents at an hourly rate of £90 to attempt to recover debts, without apparently setting any upper limit on the amount costs which could be incurred in doing so. The Tribunal considered that given the specific provision elsewhere in the lease for recovery of legal costs in respect of arrears this could not be good estate management and would not be reasonable. These costs would therefore not in the view of the Tribunal be recoverable under this provision either.
49. As a consequence the Tribunal disallows all time charges for arrears recovery incurred by the management company and allows solicitors costs and disbursements. The Tribunal was not persuaded that some disbursements had already been recovered through the county court in respect of some tenants having not been provided with sufficient evidence on this point.

Repairs to Building

50. Not disputed, allowed in full

Guttering/Drainage

51. Not disputed, allowed in full

Other Maintenance

52. Not disputed, allowed in full

Survey

53. Not carried out

Management Charge

54. Whilst the Tribunal is not bound by previous decisions, the Tribunal agrees with the previous Tribunal decision which examined the budget for 2012, that a sum of £400 would be reasonable for Management Charge Landlords Services and therefore allows this sum. This in the Tribunal's view is reasonable for a small block of this type and scope, given a management charge of £1612 has already been allowed in respect of Management Services for the same period.

Accountancy and administration

55. The Tribunal is asked to consider a total cost of accountancy services of £4868 across both Management and Landlords Services, with the accountancy cost itself being in the view of the Tribunal properly chargeable to Landlords Services. Having spent two days looking at the accounts with the assistance of the parties as part of the s27A application the Tribunal concluded that Mr Watson's accounting was not dishonest or fraudulent, but it was extremely convoluted and at times opaque. Mr Watson's approach of using his own companies with himself as co-director with a non-participating son or daughter to provide the management services to the property at an hourly rate inevitably leads to a situation where it is in Mr Watson's financial interests for matters to be prolonged and complex and requiring long periods of time to resolve.
56. Mr Watson has chosen to account for the transactions in respect of the Old Chapel by means of cash accounting. This is a perfectly legitimate way of accounting for transactions, but means that a large number of accruals have to take place across the financial year ends, and the amount invoiced in a particular year does not match the amount charged out to the tenants in the same period. This makes it more difficult for the tenants and the incoming RTM Company to see clearly what the financial position is. Indeed it became increasingly apparent at the hearing that Mr Watson himself could not see clearly what the position was, compounded by his previous assertions at directions hearing that he was reluctant to provide the accounting information to the Tribunal as it was 'too complex for the Tribunal to understand'.
57. Mr Watson informed the Tribunal that the accounts were inordinately complex and time consuming for a block of this size due to the structure of the Lease which requires the accounts to be split between Landlords and Management Services. The Tribunal is conscious that the splitting of the accounts into Landlords Services and Management Services is not of the Landlord's making, being a product of the drafting of the lease. Nevertheless it is the view of the Tribunal that the complexity of the accounts and the amount of time taken to manage them is wholly disproportionate to the size and scale of the development. The property is an 8 flat conversion with very little in the way of common parts requiring management, and relatively few necessary transactions.
58. The Tribunal has seen evidence from the independent firm of accountants that in their view the level of complexity of the accounts was considerable notwithstanding the relatively small size of the development. The accountants' fees were £2400, in respect of Landlords Services, having written off a further £2200 of their time. The accountants' fees for reviewing projected expenditure for Management Services were £330 plus £500 for the accountants' report. This gives a total of professional accountants' fees for this period of £3230. The Tribunal considers that this sum is excessive for a block of this type and heard evidence that the current accountancy bill is significant lower.

59. In addition the Tribunal has been provided with invoices and timesheets from the Management Company LPM of which Mr Watson is the director, for the time spent in preparing accounts information. The Tribunal is concerned that a significant number of LPM invoices from 2011 and 2012 were only invoiced to the Old Chapel in 2014 when it appears Mr Watson was having a 'clear out' of his ledgers in LPM and billing any time which related to the Old Chapel. Mr Watson was very unclear when questioned whether these sums would have been apparent to the accountants who prepared and certified the accounts in 2011 and 2012, or whether they would not have been included in those balances. The Tribunal was uncomfortable that LPM appears to be charging for preparing accounts information to go to the accountants in 2011 and 2012 which subsequently appears to have been incomplete and inaccurate, or the very least is sufficiently opaque that it is not possible to tell what has or has not already been accounted for. It clearly cannot be reasonable in the view of the Tribunal to charge Tenants for lengthy preparation of inaccurate information by Managing Agents which leads to accountancy information which is difficult to interpret and to professional advisers having incomplete figures. This is reflected in the disallowance of accountancy charges below.
60. As far as the late invoices themselves are concerned, the Tribunal does not deal with them individually in detail as the Tribunal has already considered the sum which is deemed to be reasonable and payable under each element of the service charge accounts and this figure applies irrespective of when invoices were rendered.
61. The Tribunal considers that a global figure of £1500 for accountancy and administration of accounts would be reasonable. This is still higher than might be usual for a small block of this type as it reflects that the drafting of the lease requires some additional work.

Interest

62. As above, the Lease allows for borrowing at clause 6.2.3, and the definitions section sets out a prescribed rate of 4% above RBS base rate which in 2011 was 0.5%. The Landlord has borrowed money from a connected company at an interest rate of 8%. The Tribunal considers the prescribed rate to be a more reasonable figure and therefore substitutes an interest figure of £358. Similarly the £871 erroneously claimed under Management Services becomes £490 when the rate above is applied.

Taxation

63. This was not disputed.

Landlords Services Actual 2012	Actual	Allowed
Cost of arrears recovery	8973	Disbursements and professional fees only
Plus Management Services Arrears Recovery	5704	
Repairs to building	0	0
Guttering/drainage	216	216
Other maintenance	640	640
Survey	0	0
Management Charge	1257	400
Accountancy and administration	1710	1500
Plus Management Services Accountancy	3158	
Legal and Professional	0	0
Part provision for planned works	0	0
Misc	49	49
Interest	637	358
Plus Interest claimed under management services	871	490
Taxation	120	120
	22,464	3773 + professional fees and disbursements

Actual Service Charge 2013

64. The Tribunal was not presented with any accounts for 2013 as these have not been prepared by either party to date. The Landlord argues that as a consequence no service charge has been rendered under the terms of s18 of the Landlord and Tenant Act 1985 and therefore no determination is possible. The Tribunal finds that it cannot determine the reasonableness and payability of the service charge without being provided with information as to the costs incurred. Accordingly, this element of the Applicant's claim is dismissed and no determination is made. This therefore does not preclude the matter coming before a future Tribunal once accounts have been finalised.

Costs

65. An application was received by the Tribunal from the Tenants that the costs of and in relation to the Service Charge application should not be added to the Service Charge Account. The Tribunal finds that in the circumstances of this case it would be entirely appropriate to make an order under s20C.

S94 balance on handover

66. This application was brought by the RTM Company represented by Mr Dilenardo. The RTM Company's position is that a significant sum of money is due to it but that due to inadequate provision of information it was not possible to accurately identify what the balance was. The balance was estimated by the RTM Company as being at least £60,367.38. However this figure was retracted by the Applicant and it was accepted that this figure had been arrived at taking into account sums which had been paid over to the Landlord after the handover date.
67. Repeated requests for disclosure eventually elicited significant accounts information from Mr Watson.
68. Mr Watson's position is that the balance to be handed over from the service charge account at the date of handover (11 June 2013) is zero. In fact Mr Watson argues that he is owed significant sums of money due to non-payment of service charge arrears.
69. The service charge accounts were last prepared by Mr Watson up to 31st December 2012 and signed off by Kinsman Zelouf Accountants as being accurate and in particular that the figures reflected what was in the bank balance.
70. The accounts ledgers at date of handover show a negative balance of -£14,100.09. Whilst the testing of transactions with Mr Watson at the hearing revealed some inconsistencies and difficulties in explaining all elements of the accounts, the Tribunal did not conclude that the accounts were so spurious as to suggest that the -£14,100.09 figure was significantly inaccurate. The Tribunal did not receive any compelling evidence from the Applicant to suggest that the accounts should be interpreted in a different way from that which appears on the face of the ledgers.
71. Mr Watson was concerned that the Tribunal did not go into every aspect of the accounts which he wished to justify. However as the Applicant did not offer any contradictory evidence to suggest an alternative interpretation of the account or an alternative handover balance and the Tribunal therefore accept Mr Watson's evidence on this point.
72. Mr Watson stated to the Tribunal that he currently holds the sum of £11,317.88 which he accepts is due to the RTM Company. This sum does not however represent the balance at the date of handover as it appears to reflect sums paid to Mr Watson after the date of handover and subsequently retained by him, and so does not fall within the Tribunal's jurisdiction under s94.
73. The Tribunal asked Mr Watson why he had not handed this money over to the RTM company if he accepted that it was theirs. His response was that they would have to sue him for it.

74. The Tribunal deeply regrets being unable to assist in the recovery of this money but records this exchange so that it may be of assistance in recovering the sums accepted as being due to the RTM. The Tribunal also observes that Mr Watson up to this point has benefited from conducting ongoing litigation as he has been charged his time and expenses through LPM and recovering them as administration charges. Indeed, a common theme throughout the hearing has been that obstructiveness and prevarication has been financially in Mr Watson's best interests.

75. The Tribunal's view is that were he to charge in this manner for the time spent in respect of this sum which is admitted to be due, is that the Tribunal would ask any future Court tasked with dealing with the matter to consider whether Mr Watson's conduct was vexatious and/or an abuse of process. The Tribunal would also note for the reference of future Tribunals that whilst this Tribunal's view is not binding upon any future Tribunal, in its view the attempted recovery of any such costs in the form of an administration charge would not be reasonable.