Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0049/03/15

In the Matter of 1,2,4,5,8,9,10 Manchester House, The Square, Aberbeeg, Abertillery NP13 2AB

In the matter of applications under S.27A and 20C of the Landlord and Tenant Act 1985
and under Schedule 11 of the Commonhold and Leasehold Reform Act 2002

Applicants Mr Kevin J Evans, Mr David T Evans, Mr David Walker, Mr Kevin Forbes, Mr William Neild and Mr Vikas Girijan

Respondents Crown Management UK Ltd and Crown Builders Ltd

PENDERFYNIAD/DECISION

BACKGROUND

1 Manchester House (the Property) is a four storey building with a small area of ground adjacent to it, located in Aberbeeg, a village to the south of Abertillery in the county borough of Blaenau, Gwent. From its position and the style of its construction, we have concluded that the Property is a former mill adjacent to one of the branches of the river Ebbw with a mill race to turn the wheel, no longer in existence. It is stone built with a slate roof. It has uPVC doors and window frames. Some of the exterior walls have been spar rendered. On the opposite side of the river is (what is now) a single track railway which leads to Ebbw Vale. Aberbeeg railway station, now disused, is located where the railway crosses the river next to the Property. The station was formerly where the line split with one line going to Ebbw Vale and the other to Abertillery.

2 At some point in its history, the Property was converted into 10 flats and originally let out on periodic tenancies. It was purchased in about 2010 by a company which was organised by a Mr Spence who with the assistance of Mr Forbes and Mr Neild, two of the Applicants in this case, sold the flats on long leases of 999 years, each at a premium and subject to a ground rent and subject also to each lessee paying a $1/10^{th}$ proportion of the maintenance and management costs as set out in the leases. Mr Spence, Mr Forbes and Mr Neild purchased some of the flats. Mr Spence has since sold his flats, but Mr Forbes and Mr Neild have retained theirs.

3 The layout of the flats within the Property is somewhat unusual. Flats 1, 2, 5 and 6 have their own separate entrances. Flats 1 and 2 are sometimes referred to as basement or lower ground floor flats. Flats 3 and 4 share an entrance accessed by means of a small vestibule. Flats 7-10 have a single entrance with a staircase leading to flats 7 and 8 on the first floor and to flats 9 and 10 on the third floor. The external parts comprise mainly concrete pathways but there is a small area of sloping garden outside the entrance to flat 2. At the time of our inspection this was overgrown and not maintained.

4 Many of the lessees sub-let their flats on assured tenancies. However, in about April 2012 (the date is open to question), a leak occurred in Flat 10 (Mr Neild) on the top floor. This caused serious water damage to some of the flats as well as the communal staircase serving Flats 7 to 10.

There was considerable damage to Flat 8 (Mr Forbes) which we were able to inspect. There was also damage to Flats 7 (Mr Latif, not a party to these proceedings) as well as Flat 10. A number of insurance claims were made, including claims by Mr Forbes and Mr Latif, to Countrywide Residential Lettings Ltd (Countrywide), the managing agents for the then freeholders Ground Rents (Regis) Ltd (Regis), who indicated to the lessees that they would be dealing with the matter. The claims were submitted. However, one of the lessees (not Mr Forbes) was informed that the insurers were not going to pay. The reason given was that Flat 10 had been unoccupied at the time of the leak. This appears to be at variance with an item of documentary evidence which was before us and which indicates that the claim was in fact paid. This is something to which we shall return later in this decision. We are, however, satisfied that Mr Forbes never received payment of his claim. We are also satisfied that he received no explanation as to why his claim was not paid. With neither money nor any proper explanation forthcoming it was inevitable that relations between the lessees and Countrywide would sour. Service charges were withheld. Countrywide had no funds to carry out its effective management responsibilities. The situation deteriorated to such an extent that Regis offered the freehold of the Property for sale at auction with nil reserve upon condition that the purchaser on completion paid Regis, in addition to the purchase price and a contribution to Regis' Solicitors' costs, the sum of £9,436.12 in respect of arrears of ground rent and service charge.

5 On the 14th August 2013, the freehold was purchased by the second Respondent, Crown Builders Ltd (to which we shall refer as Crown) who appointed the first Respondent, Crown Management UK Ltd (Management) to manage the Property on its behalf. Both Crown and Management are part of a group of companies owned and run by members of the Watts family from their offices in Norwich. Crown has over the years acquired a portfolio of 30 to 40 developments comprising 250 to 300 units. These are managed by Management under the direction of Mr Graham Mark Haines and his wife Mrs Melissa Irene Haines who is the daughter of Mr Neville Watts. Mr Watts, who has other business interests, is also a director of Nova Industry Ltd (Nova). It was Mr Watts who inspected the Property following its purchase and provided the information for a "report" prepared by Nova. Mr Watts' brother, Mr Michael Watts, is the owner of the accountancy firm George Lloyd which prepared the management accounts on behalf of Management.

6 The purchase price paid by Crown was £8,000 (plus a contribution of £96 towards Regis' Solicitors' costs) which together with the arrears of ground rents and service charges required a payment of over £17,000. The attraction was, of course, the ground rents of £2,500 pa which in theory produced a return of over 14%. Recovery of the arrears would double that. However, unlike the acquisition of freeholds of residential houses, the purchase of the freehold of a block of flats brings with it the responsibility to manage the block and in particular to insure and maintain the structure and common parts. The insurance and maintenance costs as well as the management costs are generally recoverable under terms of the individual leases of the flats. However, the lessees have withheld their payments due to their serious dissatisfaction with the way the management of the Property has been handled. In July 2014, the Blaenau Gwent Council became involved requiring improvement work to be carried out. An application was successfully made under section 20ZA of the Landlord and Tenant Act 1985 (the Act) to dispense with aspects of the statutory consultation process. Work was carried out but some lessees have refused to pay their contributions. Management has insufficient funds to carry out further maintenance and repair. It has threatened defaulters with proceedings and issued administration charges. This has induced Mr David Walker, the lessee of Flat 2, to make an application for this Tribunal to determine the amount of service charges payable in accordance with section 27A of the Act. The application was originally brought in respect of the costs incurred in the financial periods for the calendar years 2013 and 2014, and for the costs proposed to be incurred during the financial period for the calendar year 2015. By agreement, the application was amended to include the costs incurred in the financial period for the calendar year 2012. Although the original application was made by Mr Walker, other

lessees, whose names appear at the head of this decision, have been joined as applicants. Further, whilst Management was named as the original Respondent, the Tribunal considered it appropriate that the freeholder be named as a respondent. Consequently, Crown was joined as a second Respondent. None of the parties has objected to any of the additional parties being joined.

PRELIMINARY POINTS

Law of Property Act 1925 s 136

7 The contract for the sale and purchase of the Property included an obligation on the part of Regis to assign to Crown the right to recover the arrears which Crown was obliged to pay on completion. Under section 136 of the Law of property Act 1925, "any absolute assignment by writing under the hand of the assignor…of any debt…of which express notice in writing has been given to the debtor…is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice

(a) the legal right to such debt…
(b) all legal and other remedies for the same, and
(c) the power to give a good discharge for the same…

8 For some reason, the Solicitors acting for Crown did not insist upon an assignment of the arrears on completion and consequently no notice was given to the lessees. It would also appear that no enquiries were made as to what, if any, equities the debts were subject. It was only as a result of the matter being raised by the Tribunal that the Solicitors for Regis and Crown rectified the matter. The assignment of the debt is dated the 31st July 2015. Such assignment must be "subject to equities" an issue to which we shall return later.

The Landlord and Tenant (Covenants) Act 1995 s 23

9 Mr K Evans and Mr D Evans (Messrs Evans)(Flat 1) and Mr Girijan (Flat 9) purchased their flats from lessees who, it was alleged, owed service charges. Management understood that the Messrs Evans and Mr Girijan were liable to pay arrears which had accrued prior to their ownership. At the pre-trial review held on the 17th July 2015, the Tribunal invited Counsel for the Respondents to consider the effect of section 23(1) of the Landlord and Tenant (Covenants) Act 1995 with reference to claims made against lessees in respect of service charges payable prior to their respective purchases of their flats.

10 The Respondents conceded that they were not entitled to make such claims. Counsel nonetheless asked that we proceed with the determination of the amounts as this would enable Crown to use such determination in order to found a claim for forfeiture of the leases should the amounts determined still be in arrears. However, a decision of this Tribunal only affects the parties to the application. It cannot be binding on former lessees who were not joined in the proceedings, who were not given an opportunity to present their cases and who may not even be aware that such proceedings had been initiated. A determination will be made in respect of the 2012 service costs insofar as they affect the parties to this application. Such a determination may be persuasive in negotiations with former lessees, but it cannot prevent such former lessees from arguing their cases and submitting evidence which may not have been available to the present parties.

Rheoliadau Taliadau Gwasanaeth (Crynodeb o Hawliau a Rhwymedigaethau a Darpariaethau Trosiannol)(Cymru)/The Service Charges (Summary of Rights and Obligations and Transitional Provisions)(Wales) 2007 (Welsh Regulations)

11 The Tribunal also drew the Respondents' attention to the effect of failing to comply with the Welsh Regulations. It appeared from the papers submitted that the notice detailing the summary of the lessees' rights and obligations which accompanied the service charge demands served by Management did not comply with those regulations. The Respondents accepted that the notice accompanying the demands sent by Management did not comply and they conceded that the service charges were not payable until such time as the correct notice was served. This has now been done, but not before the administration charges were charged against individual lessees for non-payment. The Respondents conceded that as the service charges were not in fact payable, such administration charges, incurred to seek to recover money not then payable, were not reasonably incurred. The concession did not extend to a charge of £600 in the 2014 service charge accounts nor to the service charge demands issued by Countrywide.

12 The Respondents also conceded that demands for payment of administration charges were not accompanied by the correct form of summary of rights and obligations in accordance with Rheoliadau Taliadau Gweinyddol (Crynodeb o Hawliau a Rhwymedigaethau)(Cymru)/The Administration Charges (Summary of Rights and Obligations)(Wales) Regulations 2007. However, in view of the Respondents' concession in paragraph 11, nothing now turns on this.

PROCEDURE

13 Preliminary directions were issued on the 1st April 2015 following which a number of Scott Schedules were prepared. Further directions were issued on the 24th and 29th June 2015. A pre-trial review (PTR) was held on the 17th July 2015 at which the issues to be determined were discussed and recorded and further directions given.

14 With the agreement of the parties, it was directed that the Respondents, who were legally represented, should prepare the indexed paginated hearing bundle with the Applicants providing a copy of any documents they wished to be included. Unfortunately, the Applicants assumed that documents already sent in would automatically be included. They were not. The Respondents assumed that the documents were not required. What is more, the hearing bundle was not comprehensive, and whilst it was indexed, it was tabbed, not paginated. Consequently, we were obliged to consider five bundles of documents, sometimes moving from bundle to bundle seeking documents relevant to a single issue, plus additional documents introduced by the parties during the course of the hearing. In some bundles there were multiple copies of the same document and documents contained in one bundle repeated in another. It is inevitable in cases of this nature that parties request permission to introduce additional documents, some of which are allowed and some are not. However, it is easier to deal with such documents if basic principles for a hearing bundle are adhered to in the first place. The effect of the failure to comply with the Tribunal's direction relating to the hearing bundle caused delay and confusion not only for the Tribunal, but also for Counsel and the parties present. We shall refer to this again later when dealing with the issue of costs. Suffice to say, at this stage, there were five bundles which were referred to as follows:

- Bundle 1 - Documents submitted by Management on the 9th April 2015 in response to the Application and the directions given on the 1st April 2015.
- Bundle 2 - Documents submitted by the Respondents on the 8th July 2015 in advance of the PTR.
- Bundle 3 - The hearing bundle
- Bundle 4 - Documents submitted by the Respondents on the 25th November 2015
- Bundle 5- The insurance papers submitted by the Respondents on the 1st December 2015

We shall refer to documents indicating the bundle (B1, B2, B3) followed by the relevant tab (T1a, T1b, T1c in bundle 1; T9a, T9b…T10a, T10b…T18 in bundle 2; and T1, T2 etc in bundle 3). In bundles 4 and 5 we shall refer to the relevant page number. Other documents will be identified by description - eg an e-mail or letter dated …

15 The hearing took place at the Tribunal Offices in Cardiff on the 5th August, 7th and 8th September, 26th and 27th October 2015 and 14th December 2016. The Tribunal inspected the Property prior to the hearing on the 5th August 2015. Mr Manley, the Respondents' Counsel, was present as were a number of the Applicants. We were able to inspect the exterior of the Property, the communal accesses and (in the presence of Mrs Forbes) Flat 8 which had not been restored following the flood in 2012.

16 The hearing on the 5th August was attended by Mr Collier (on behalf of Mr Walker), Mr Girijan and Mr and Mrs Forbes. Messrs Evans indicated that they could not attend on that day but there was no appearance by Mr Neild. We were satisfied that he had been notified of the hearing. We were informed that he was not well and that it was unlikely that he would attend any of the hearing days. At subsequent hearings, different combinations of Applicants attended. As the Applicants' issues had been raised and discussed at the PTR, Mr Manley accepted the suggestion that it would be appropriate for the Respondents to present their case first. However, as Mr and Mrs Forbes indicated that they might not be able to attend an adjourned hearing, Mr Manley invited the Tribunal to ask Mr Forbes to give evidence first as he would be able to deal with issues relating to the 2012 accounts which none of the other Applicants present could. We considered this to be a sensible suggestion and proceeded accordingly.

THE EVIDENCE

17 During the course of the hearing, we heard evidence from Mr Watts, and Mr and Mrs Haines on behalf of the Respondents. We also heard from Mr Evans, Mr and Mrs Forbes, Mr Girijan and Mr Collier. We were able to assess the credibility of the witnesses over several days in the ways they presented their respective cases, the ways they asked and answered questions and conducted themselves and the manner of their various contributions generally throughout the progress of the case. We accept the evidence of Mr Evans and Mr Girijan. We also accept the evidence of Mr and Mrs Forbes. There were a few instances where there was some uncertainty as to dates, but we are satisfied that on the main issues their evidence is credible. Regrettably we do not take the same view when considering the Respondents' evidence. They initially pursued claims for money to which they were not entitled, to the obvious concern of the Applicants. This was after they had taken legal advice. It is true that these claims were dropped at the PTR, but either the lawyers acting for the Respondents failed to advise the Respondents correctly or the Respondents pressed on in the hope that the Applicants would eventually pay. Neither possibility reflects well upon the Respondents. They added to the pressure on the Applicants by raising more and more administration charges with the clear implication that this would continue until the Applicants gave in. They denied Mr Girijan access to his flat (as we find) because his predecessor owed service charges. Mr Watts could not remember whether he had visited the Property before Crown purchased it. We cannot accept his evidence on this. He is an experienced businessman. Such a visit would have been recorded. The vagueness of his responses raised doubts about his credibility. An invoice dated the 2nd September 2013 from Nova refers to inspection of the Property and the provision of "a report". There is no report as such. We were directed to a letter from Mr Watts, who carried out the inspection on behalf of Nova, in which he refers to various repair issues. According to the Respondents, this is the report. However it is dated the 2nd October 2013 and the letter itself refers to a meeting at the Property on the 27th September, 2013. Mr Watts told us that the invoice was wrongly dated. He also stated that the reason for his attendance was because the

Council had asked him to attend as a representative of the freeholder. However, the inspection by the Council did not take place until the 3rd July 2014 (see letter dated 4th August 2014 at B3 T18). Mr Watts subsequently acknowledged that he had made a mistake, which added to our concerns about his credibility. We are also unconvinced by Mrs Haines' evidence. For example she told us that she had difficulty accepting that Countrywide not had served the demands with the correct notices in accordance with the Welsh Regulations. Countrywide had sent her a copy of the Welsh Regulations. She had been to Countrywide's offices and had looked at its files. She had not seen the actual invoices. However, she had missed it. We do not find it credible that if the correct information had been given to her, someone of Mrs Haines' ability would have overlooked something as crucial as the Welsh language notices as the obligation on the tenants to pay their service charges depended on their being served along with the English language notices.

18 In his summing up, when dealing with the issue of costs, Mr Manley suggested that Mr Collier was vexatious. In support of his comment, he reminded us that Mr Collier had conceded that he wanted to make life as difficult as possible for the Respondents, he had changed his arguments, during the course of the hearing, he had made numerous personal remarks about the Respondents' witnesses, that he would disregard the Tribunal's decision if it was unfavourable to him and that he had been warned about his conduct in several occasions. All this is true. He also made wild and silly accusations without any basis for doing so, many of which he had to retract under cross-examination. Some things he appeared to accept one day, he challenged later in the proceedings. At one point he even threatened to walk out if the Tribunal ruled against him on an issue. There is no doubt that Mr Collier's conduct was at times upsetting and unhelpful to the Tribunal. We also accept that, when he discovered the effects of a leak above the ceiling finish, he contemplated making an insurance claim for alternative accommodation as the flat was "uninhabitable". Mr Collier conceded that neither he nor Mr Walker was living there at the time although he claimed he may have been thinking about moving in. However, he did not pursue it. (See letter dated 14th February 2013 from Mr Walker to Pier Management and the reply dated 28th February). Nonetheless leaving to one side his manner and the, so obviously, wild remarks, we are satisfied that he was essentially telling us the truth and it would be wrong for us discredit his evidence because of his unfortunate and voluble personality.

THE 2012 ACCOUNTS

19 The 2012 accounts are to be found at B2 T9(a). The entries do not include the insurance premium which is to be found at B2 T10(f). The insurance is separate because it was administered, along with collection of the ground rents, by Pier Management Ltd (Pier Management) on behalf of Regis. Maintenance and general management issues were dealt with by Countrywide. At the PTR, no issues were raised about the electricity accounts (£236.53). The Applicants did indicate that they would be raising the amount of the audit fees charged by LB Group, Chartered Accountants from Stratford in London (£380.00 plus VAT = £456.00) and whether the two invoices from Quality Assured Facility Services Ltd (£60 plus VAT = £72 for attending to provide access for a loss adjustor and £143.00 plus VAT = £171.60 for supplying and fitting a hinged board and steel padlock at the entrance to the common access for flats 7-10). At the hearing Mr Forbes informed us that he did not really have an issue with the amount of the audit fee. Nor did he object to the cost of the two invoices from Quality Assured Facility Services Ltd. Mr Forbes' issues related to the insurance charges, the management fees and the fact that he had been denied access to Flat 8. He also raised issues with regard to the balance of his account.

Insurance *- Premium - £1,683.10*
- Insurance administration fee - £238.80
- Insurance arrears charge - £500.00

20 Mr Forbes' case is that he has received no value for the premium because his claim has not been met either due to the failure by Regis or Pier Management to take out a policy suitable to the needs of the lessees or due to the lack of proper management by Countrywide. He also argued that if Crown was claiming to have the right to receive outstanding moneys, it had to accept the liability for the failures of Regis, Pier Management and Countrywide. Mr Forbes could see no justification for the insurance administration fee or the arrears charge. He has in fact paid the 2012 insurance premiums for his flats. The amount of the charge was not in issue.

21 Mr Forbes explained that he had purchased two flats - numbers 4 and 8. Each was acquired subject to the standard form of lease (Lease) a copy of which appears at B3 T7. Under the term of the Eighth Schedule, it was the responsibility of the lessor:

> 3 At all times during the Term (unless such insurance is vitiated by any act or default of the Lessee)
>
> 3.1 To the extent that such cover is for the time being available to insure the Building in an insurance office of repute against fire lightning explosion earthquake landslip subsidence heave riot civil commotion aircraft aerial devices storm tempest flood impact by vehicles bursting and overflowing of water pipes tanks and other apparatus and damage by malicious persons and such other risks against which the Lessor may from time to time reasonably deem it prudent to insure …
>
> 3.2 To use all reasonable endeavours to ensure that lessees of Flats and their mortgagees (in general rather than specifically) are noted as having an interest in the policy
>
> 3.3 To produce to the Lessee on demand (but not more frequently than once in every year save in the event of a claim arising from damage to the Demised Premises) at the Lessor's option either a copy of the policy and the receipt for the last premium paid or evidence from the insurers of the full terms of the policy and that the same is in force
>
> 3.4 To produce to the Lessee on receipt a copy of any endorsement varying the terms of the policy
>
> 3.5 As often as the Building or any part of it is damaged or destroyed by any insured risk the Lessor shall…utilise all insurance moneys received in respect of such damage or destruction in rebuilding and reinstating the same…

22 Under paragraph 1 of the Seventh Schedule of the Lease, the lessee covenants "to pay the Rent (ie the ground rent) and the Insurance Rent on the days and in the manner herein provided without deduction". The Insurance Rent is the lessee's Insurance Contribution, namely "1/10th of the sums expended by the Lessor from time to time in performing its covenant in paragraph 3.1 of the Eighth Schedule". According to Mr Forbes, he paid to Pier Management invoices for both his flats which included payments of £168.31 each such payment being 1/10th of the total premium claimed. The invoice indicates that cover extended from the 22nd March 2012 to 21st March 2013. This was not challenged by the Respondents.

23 On about the 6th April 2012 - ie during the period of cover, although this was allegedly disputed by the insurers - the leak to which we referred in paragraph 4 occurred causing extensive damage to Flat 8 and the common parts as well as other flats. At the time the flat was rentable. He received a telephone call from a Mr Thornton, a lessee at the time, telling him that there had been a

leak at the Property. Countrywide did not contact him, but he telephoned Countrywide and spoke to Tina Williams. She told him that she would send a claim form, send someone around to inspect the damage and she would sort it out. She forwarded a claim form which he completed and returned. On the 25th April 2012, Tina Williams submitted a claim form on behalf of Regis stating the date of loss to be 6th April 2012 and the cause being a "burst pipe from kitchen of flat 10. Water was turned off in road. Water flooded into several apartments and common parts of the building."(B4 T4a&b P15) Mr Forbes could not recall exactly when he visited the flat. In evidence, he told us that he and his wife did not inspect the damage until June or July 2012, although in his statement he says that they did so in May. Nonetheless by the time they inspected the flat, they had received an e-mail from Mr Latif, the owner of Flat 7 to say that Mr Latif had spoken to Pier Management who had informed him that the claim would not be paid as the premises had been left unoccupied for 7 days. There was water damage to walls and mould had started to develop in Flat 8. On the 21st June, 2012, Countrywide requested access to Flat 8 for the insurers (or, possibly, assessors) to inspect. Mr and Mrs Forbes acknowledged and agreed. On the 9th July 2012, according to Mr Forbes' statement he contacted Tina Williams at Countrywide for an update on the claim. Her response is dated the same day and was exhibited to Mr Forbes' written statement. It reads: "The claim you have submitted is being dealt with as part of the main claim for the communal areas and therefore ICD will be in contact in due course."

24 Unfortunately, on the 16th July 2012, a further incident occurred when, flats were broken into and boilers and pipework were stolen. Attempts were made to contact Tina Williams at Countrywide by telephone and e-mail but despite messages being left for her she never responded. The communal access to the staircase and Flats 7 to 10 was boarded up and padlocked. Mr and Mrs Forbes tried telephoning but the only response was that Countrywide would get back to them. It never did.

25 Mr and Mrs Forbes had assumed that they were covered by the insurance and assumed that the insurers would sort things out - deal with the drying out and redecorating. That is what had happened with previous claims they had made. There had been no furniture there, just carpets. They understood that the carpets would have been included in the claim. The claim was, however, not paid. The lessees never received any explanation from Countrywide as to why. They had asked for a copy of the policy and the receipt for the premiums but had received nothing. Mr Forbes did not even know the name of the insurer. Eventually they received a communication saying that Regis was selling and wanted a ridiculous price. They could not afford to pay for the remedial work which is why it had not been done. They wrote to Crown in September 2014 to gain access. They received a key in November 2014.

26 Cross-examined by Mr Manley, Mr Forbes confirmed that the vandalism occurred after the flood. The burglars had kicked open the communal door. He did not know if Flat 10 was occupied. If not, he understood that Mr Neild had failed to inform the insurer under the condition that the insurer must be notified if the premises are unoccupied for 30 days or more. That would mean that the Property would not be covered under the insurance policy. Mr Forbes confirmed again that he did not receive a copy of the insurance policy. Access was an issue. He had not received the letter addressed to the leaseholders dated 2nd October 2013 (B3 T17). Countrywide and Crown should have sent him a key. They could have left the key with Mr Collier or the local agent. Although he had been trying to gain access since 2012, he had not contacted Crown between August 2013 and September 2014. He had attempted several times to obtain a key from Countrywide. After his visit in July 2012, his next visit was after receiving the key in November 2014.

27 Mr Forbes also challenged the insurance administration fee and insurance arrears charge. In its statement headed "Compliance with Directions dated 22nd July 2015" (B3 T1) (Statement), the

Respondents comment that they had "asked for an explanation from Countrywide Management for the insurance administration fee and insurance arrears charge". In B2 T10g, Mr Haines explained, in connection with Management's insurance handling charge, that it is a "nominal amount for the administration in arranging and invoicing and collection of insurance amounts". Mr Haines explained that Management had obtained some information from Countrywide. In her evidence, Mrs Haines made the point that the insurance arrears charge was applied at a time when all lessees were in arrears. However, no invoices had been provided by Countrywide to support these charges. Mrs Haines also confirmed that Pier Management was responsible for arranging the insurance and for invoicing and collecting the proportion of premiums from the lessees.

28 At the beginning of his evidence, Mr Watts told us that Crown had purchased the Property at auction in July 2013. He understood that the Property's insurers would not pay claims where the premises were unoccupied. They had paid one claim of £5,000 but would only insure the Property for fire, explosion, aircraft and aerial devices but not flooding. Because of the insurance difficulties, Regis had decided to dispose of the Property approximately 6 months prior to Crown's purchase. He was referred to an e-mail from Pier Management to Management dated the 7th October 2013 (B2 T10(f)). It contains a schedule of the claims made on the "previous policy" which had been taken out in "March" (presumably March 2012). It refers to a claim made in respect of an incident on the 6th April, 2012. The address of the incident was Flat 8 and the causation was "Escape of Water from flat above". The schedule states categorically that the sum of £5,865.00 was "paid". Asked about this e-mail, Mr Watts accepted that Countrywide must have been paid in respect of Mr Forbes' claim and that Mr Forbes should have received the money. Mr Forbes had previously confirmed that he had not received it and he was not challenged in that assertion.

29 Had the situation remained there, we would have been inclined to accept that the claim had been paid and that due to an oversight on the part of Countrywide, Pier Management or Regis, the money had not been correctly identified and wrongly posted. However, in fairness to Mr and Forbes, they have been attempting to ascertain precisely what has happened. Mr Haines has also made enquiries. Unfortunately, the information provided is limited and as we shall explain later in some cases raises further unanswered questions. Little of it is direct evidence. Hardly any original documentary evidence has been submitted. No-one directly involved has given evidence to the Tribunal. An e-mail from a Mr Mike Thornton to Mr Watts dated the 24th September 2013 states that he had spoken to a Mr Paul Mitchell of Insurance Claims Direct who told him "that the reason why the water leak claim did not move forward was that it was deemed that the leak was from before the property was insured with then (sic) - ie before Regis bought the Freehold. This may well be true and it would be almost impossible now to prove otherwise." He adds that the flats "were mostly unoccupied. This was stated as a second reason why the claim would not be accepted". Mr Thornton suggests that Mr Watts should speak to Mr Mitchell. Mr Watts made no reference in his evidence to this e-mail nor whether he contacted Mr Mitchell.

30 We also have a copy of an e-mail from Mr Dave Kruger of RiverStone Management Ltd (the successors to the original insurers) to Mrs Forbes dated the 22nd September 2015 (B4 T6b P26) stating that following permission from Pier Management he had spoken to the loss adjusters and "it would seem that the payment made by us in 2013 for £5,865 related to the loss adjuster's investigation costs only. No payments were made to the policy holder or any other party." A subsequent e-mail from Mr Kruger to Pier Management dated the 25th September and forwarded to Mrs Forbes on the 20th October gives a breakdown as follows: "Fees and Expenses - £4,887.50" plus "VAT - £997.50". It adds "Fees are charged on a fixed hourly rate and were considered reasonable at the time". No copy of the invoice was produced, nor a breakdown of the charges and expenses.

31 We were also provided with a copy of an e-mail from Tina Williams to Mr Haines dated the 3rd September 2015 (B4 T3a&b P5) in which she states that "I Tina Williams was the property manager for the development and on initial inspection of the building was shocked to find the poor condition in which the building was in. It would appear that a leak had occurred from one of the apartments No 10 I do believe that was owned by Mr Nield prior to Regis purchasing the freehold which had caused extensive damage to all the communal areas along with several of the apartments. Regis instructed the insurers to attend and carry out a full survey of the damage and compile a report, however due to the damage being caused prior to the purchase of the freehold by Regis the insurers declined the claim. Please see attached report." We were told that the report was the claims record (B2 T10f) a point taken up by Mr Haines (B4 T10a-c P89). We understand that nothing further was produced.

DETERMINATION

32 Under section 27A of the Act, we may determine not only the amount of a service charge but when it is payable. We shall deal with the amount of the service charge first and at the end of this section we shall set our findings with regard to the insurance claim.

33 There is no issue that the insurance premium for the period 22nd March 2012 to 21st March 2013 was £1,683.10 and that therefore Mr Forbes' proportion of that cost was £168.31. Mr Forbes does not challenge the reasonableness of the amount as a premium. His challenge is on the basis that the policy was inadequate in that it was not tailored to the Property. With a substantial proportion of the flats being let to assured tenants, there were bound to be periods when there were vacant flats and with a number of the leaseholders living away, there would be periods when the flats would not be visited. The policy should have covered these situations so that when a leak occurred in one flat which damaged another, as happened in respect of flat 8, the owner of the flat where the leak did not occur is not prejudiced because his/her flat is at that time untenanted or because the flat where the damage did occur was untenanted. If the policy had been taken out taking into account the actual circumstances of the Property, Mr Forbes would have been able to claim on the policy and his flat would have been repaired. The Respondents' argument is that the policy was a normal policy for this type of Property, it covered the risks usually covered by such policies subject to the conditions and exceptions generally found in such policies and the premium was reasonable.

34 We are satisfied on the basis of the evidence that the policy taken out by Regis was in all probability a normal type of policy which in our experience imposes conditions in circumstances where properties are left unoccupied for certain defined periods of time - usually 30 days. These conditions generally require notification to be given to the insurer (which may then adjust the premium) and impose a responsibility on the owner to inspect the property on a regular basis - possibly weekly. There is nothing unusual in such terms and we cannot see that as a general rule a lessor can be criticised for taking out such a policy.

35 On the basis of Mr and Mrs Forbes' evidence - which we accept - neither Regis, nor Pier Management, nor Countrywide sent Mr and Mrs Forbes - or Mr Latif, on the basis of his e-mail of the 26th April 2012 - a copy of the policy or notified them of the full terms of the policy so that they could make arrangements to notify Countrywide that the property was vacant and to carry out regular inspections. It is true that the lease requires the policy details to be given to the lessees "on demand", but where there is a change of ownership which, as here, involves the taking out of a new policy, it is surely good management practice for the new lessor to notify the lessees of the full terms of the new policy . The lease obliges the lessor to notify the lessee of "endorsements". Whether that would include the provision of a copy of a new policy where one is taken out is not

something that was considered and so we make no finding in that regard. In any event it is not our role to determine whether the lessor is in breach of covenant but to determine the lessee's liability to pay.

36 We are satisfied therefore that the real issue was the failure to notify the lessees of the full terms of the policy, not the policy itself. We understand why Mr Forbes raised the issue. Indeed we have considerable sympathy for his circumstances. However, we consider that the appropriate challenge is in respect of the quality of the management and not in respect of the premium charged. No issue was taken as to the amount of the premium and so WE DETERMINE that the premium of £1,683.10 was reasonably incurred.

37 The insurance administration fee appears on the invoice to Mr Forbes as £11.94 (ie £119.40 for the Property as a whole). In the summary at B2 T10(f), the cost is put at £238.80 - twice the amount as shown in the invoice. There is no evidence from Pier Management as to how or why the charge was incurred. It is not known if they used a broker or were themselves entitled to a broker's fee. There is no invoice, nothing detailing the work. In the summary, the Respondents say (at B2 T10(f): "Documents Available - None (previous Freeholder information only)". We have no evidence as to how the charge is justified. We have Crown's explanation for their insurance handling charge, but nothing from Pier Management, Regis or Countrywide to justify theirs, nor any explanation as to why it doubled. According to the Respondents' statement appearing at B3 T1 the Respondents asked for an explanation, but it does not appear to have been taken further. In the circumstances, we cannot say that it is reasonably incurred. WE DETERMINE that the insurance administration charge was NOT reasonably incurred.

38 The insurance arrears charge of £500 appears in the summary prepared by Management (B2 10(f)) where the total insurance cost is put at £2,421.90 (ie £242.19 per flat). It is evidently included in the amount shown as outstanding for Flats 4 and 8 in the completion statement (B3 T8) as the figure of £542.19 comprises the proportion of the insurance cost plus the alleged outstanding ground rent. However, as with the insurance administration charge, we have no invoice, no information as to when it was incurred, what was done, why it is justified or in fact whose charge it is. The Respondents make the same comment as before as to the lack of documents and again they have requested information, but it appears none was forthcoming. We accept that some lessees were in arrears with their insurance charges, but without evidence justifying the cost, we cannot say that the charge was reasonably incurred. WE DETERMINE that the insurance arrears charge was NOT reasonably incurred.

39 During Mr Forbes' evidence, we were shown two invoices for Flats 4 and 8 dated the 23rd April 2012 each for £480.25. This is made up of the ground rent of £300 plus the proportion of the insurance premium (£168.31) and an administration charge of £11.94. We accept Mr and Mrs Forbes' evidence that these were paid. The invoices are both noted to that effect. Mr Forbes is therefore entitled to a credit in the sum of £180.25 being the amount paid in respect of the service charge on the 4th December 2012. The amount paid also included the ground rent which is included in the arrears figure of £542.19. We have no jurisdiction in respect of the ground rent but the Respondents may wish to adjust the ground rent balance to take the payment into account. The effect of our determination is:

Insurance charge claimed:	£168.31	Allowed :	£168.31	Paid :	£168.31
Administration :	£23.88	Allowed :	NIL	Paid :	£11.94
Arrears :	£50.00	Allowed :	Nil	Paid :	NIL

The result is that Mr Forbes' charges in respect of each of Flats 4 and 8 are to be reduced by the amounts disallowed (£73.88) and his balance by the amounts actually paid (£180.25). This does not take into account the effect of any reduction in the balance by reason of his having paid the 2012 ground rent in respect of both flats.

40 As far as Mr Neild is concerned, we heard no evidence from him. However, in our view, he is entitled to have the issues determined in the same way as the others. Accordingly he is entitled to a credit in respect of the Administration and the Arrears charges, namely £73.88.

41 This brings us to the vexed question of the insurance claim. The contemporaneous evidence, such as it is, consists of one document - the claims record (B2 T10(f))- which Crown's insurers will have wanted when adding the Property to their portfolio. It is contained in an e-mail from Pier Management dated the 7th October 2013 and related to Flats 1-10 Manchester House - not Manchester House itself and not in respect of the common parts. It shows 3 claims having been made: for Flat 8 in respect of an escape of water from the flat above dated 6th April 2012; for Flat 2 in respect of another escape of water through ceiling dated 2nd June 2012; and for Flats 1, 3 and 9 in respect of the theft or attempted theft of boiler dated 16th July 2012. At the end of each claim there is a figure in a column marked "paid" with a figure shown against each claim. The figure of £5,865.00 appears in respect of the claim for Flat 8. Taking this document, which is untainted by this application or by the prospects of further litigation, it appears to be to be a record of the amounts paid out to the lessees or persons on their behalf. That was also Mr Watts' interpretation when giving evidence. He also told us that the reason Regis was selling at auction without reserve was because they could no longer insure the property as there had been one payment of £5,000 and the insurers would not cover unoccupied property. He agreed that the claim must have been paid and that Mr Forbes should have received the money.

42 We know that Regis submitted a claim for the common parts putting the date of loss as 6th April 2012. We were also told that prior to Mr Collier's stepson, Mr Walker's purchasing Flat 2, there had been a leak for which a claim was made which is again shown as paid. We also have the e-mail from Mr Latif dated the 28th April which says that Pier has told him there was "a 7 day unoccupied clause". It does not say the claim was being rejected. In fact the e-mail from Tina Williams dated 9th July 2012 states that Mr Forbes' claim had been submitted and was being dealt with as part of the main claim. There is also the e-mail from Mr Thornton dated the 24th September 2013 to Mr Watts (nearly 18 months after the alleged date of the leak) relating his conversation with Mr Mitchell from Insurance Claims Direct that the reason for the claim being rejected was because the damage occurred before the Regis policy was taken out.

43 Nowhere is there any explanation as to why this decision was reached. Tina Williams supports that version in her e-mail to Mr Haines dated the 3rd September 2015 (B4 T3a&b P5). She says that she inspected the property. Although she does not say when she did so, the clear inference from her letter is that it was shortly after the purchase or at least sufficiently close to it to be able to confirm that the damage had already occurred when Regis acquired it in March 2012. However, that does not explain why she made a claim knowing that the damage occurred before Regis acquired the property or why she requested access for the insurers in June 2012 or why she was still pursuing the claim in July 2012. We do not know when she was told that the claim was rejected. There will have been a written explanation. There will have been a right to refer the matter to the Insurance Ombudsman. No reason was given as to why the lessees were not informed of the decision so that they could take the matter up if they wished. After all, it did not matter whether Mr Forbes' Flat was occupied or not, it would still have been damaged. We do not know the precise terms of the condition. In certain circumstances, "occupied" is not the same as "lived in".

Because he was not informed of the insurer's decision, he did not have the opportunity to challenge the rejection of the claim - if that is indeed what happened.

44 It does not seem credible to us that a responsible managing company would pursue a claim, let alone make one, in the knowledge that it was invalid. Nor does it seem credible that if the claim was rejected it would not inform the lessees of that fact and the reasons given. Further, if it had been rejected because the damaged occurred before the current owner acquired the property, a responsible managing company would have gone to the previous insurers or at least notified the lessees what they needed to do if they wished to make a claim. Ms Williams' e-mail of the 3rd September 2015 says that "Regis instructed the insurers to attend and carry out a full survey of the damage and compile a report…Please see attached report". We do not accept that the claims record (B2 T10(f)) is that "report". There may have been a report, but it was not produced.

45 Again the e-mail from Pier Management refers to claims "paid" (B2 T10(f)). Pier Management had the details. We find it difficult to understand why Pier did not inform Mr Watts that the claim in respect of Flat 8 was rejected and the amount shown was costs, if that were the case. The payment of £5,865 was made in 2013 (see B4 T6b) a matter of months before the e-mail was sent. We do not know exactly when but according to Mr Forbes, whose evidence we accept, Regis had decided to sell by the 8th February 2013.

46 According to Mr Kruger from RiverStone insurers (B4 T6b P26), "having spoken with the loss adjusters investigating this claim, it would seem that the payment made by us in 2013 for £5,865 related to the loss adjuster's investigation costs only. No payments were made to the policy holder or any other party." In our view this e-mail raises more questions than it answers. According to Mr Forbes, Countrywide sent him an e-mail on the 21st June 2012 asking for access to Flat 8 for the insurance company to inspect on the 27th June 2012. On the 25th September there was also a visit by a loss adjustor (see invoice at B2 9(a)). Mr Kruger does not give this information from the insurer's records. He does not produce a copy of the invoice. He is guarded in his language - "it seems". It is true that he asserts that no payments were made to anyone else, but that raises the question as to what the loss adjusters did for their fee of £5,865 (inclusive of VAT). We do not regard it as credible that the loss adjusters recorded that amount of costs investigating a claim relating to water damage to a small flat in Aberbeeg. It is also not credible that an insurer would agree a rate of charge which would enable the loss adjusters to spend so much time on investigating such a claim. We cannot see why Mr Kruger was not provided with a breakdown of the costs (see his e-mail to Pier Management of the 25th September 2015). He adds that fees were charged on an hourly rate and again using "guarded" language, he adds that the fees "were considered reasonable at the time". We do not know who provided that opinion or the basis for it. In our experience, such a level of fees would be more like to be associated with a successful claim where the loss adjuster would be more closely involved in the setting up and organisation of the remedial works and would receive a fee based on a percentage of the overall cost. In all probability, it would charge a percentage of the cost even if the claimant decided to accept a financial settlement of the claim rather than having the repairs carried out immediately.

47 As Mr Watts told us, if the claim was paid Mr Forbes should have received payment. We are satisfied that he did not. At the very least he would have been entitled to a credit. It is in our view critical that this aspect must be properly determined with a full disclosure of all documents and evidence from those who were actually involved with the claim at the time. It is easy enough to write e-mails. Looking up old files (electronic or physical) takes time. Staff leave. Memories fade or become confused, particularly if there are heavy case-loads. Assumptions are made so as to fill in the gaps and if these assumptions are repeated often enough they take on the apparel of factual evidence. It is after all not impossible for payments to be mis-posted. After all, Mr Forbes has

satisfied us that he paid £960.50 on the 4th December 2012 and yet that does not show as having been paid in the completion statement. If the claim was paid and the payment mis-posted by Regis or Pier Management or Countrywide, this means that Crown paid Regis too much on completion and would be entitled to a refund. It is not unheard of for funds to be mis-applied. During the hearing, we informed the parties that we were aware of a case where funds were mis-posted and wrongly paid out and where it was held that the lessees were entitled to a credit in respect of that amount. After the hearing we notified the parties of the name of the case - Christophorou and Christophorou -v- Regisport and Countrywide Property Management (CAM/22UN/LSC/2009/0049) - in order to allow them the opportunity to comment upon it. In that case, money was received on account of proposed works and at some point was allocated to a sinking fund which previously had not existed. The money was returned to a previous mortgagee and not credited to the then current lessee.

48 In view of our concerns about the Respondents' evidence relating to the insurance claim, we have decided to adjourn consideration of the issue as to when Mr Forbes should pay those service charges which we determine as payable. It would be open to us to make a finding of fact on the basis of the claims record, but the further conflicting and in our view in some cases not credible evidence does raise the possibility of other explanations not fully explored or considered during the hearing. In the interests of fairness and justice between Mr Forbes and Crown, and to a certain extent between Mr Neild and Crown, we consider that Crown, in particular, but Mr Forbes and Mr Neild as well, should be given the opportunity to adduce further - and more direct - evidence as to what occurred. Without wishing to restrict the parties as to what evidence would need to be called, original documents and witnesses in person are clearly of greater evidential weight than hastily written and guarded e-mails sent in the knowledge that the author will not be required to justify their contents. Alternatively, Crown and Mr Forbes may well take the view that it is in their best interests to seek an agreement in order to regularise their relationship as soon as possible without the necessity for further time consuming and costly hearings. It would not be reasonable to expect Mr Forbes to make payments in respect of Flat 8 until this issue is agreed or finally determined.

Management Fees *- Invoice dated 03/12/2012 - £1,560.00*
- Invoice dated 31/12/2012 (undercharged) -£780.00
- Stationery printing and postage - £28.20

49 The figures appear at B2 T9(a) with "Stationery and printing" appearing under the heading "Professional Fees". Copies of the invoices are appended indicating that the first invoice is for "Fees to 31/12/2012" and the second for "Management Fees for the period - Undercharged (01.01.2012-31.12.2012)". There is no invoice for "Stationery, printing and postage". At the PTR, the Applicants indicated that they considered that the issue in relation to the management charges was "the quality of the services and the level of fees". Mr Forbes' case is that there was no effective management. Despite requests, Countrywide never provided a copy of the insurance policy. The accounts were not prepared at the right time. No-one from Countrywide ever visited the Property. There was only limited correspondence, no gardening, no cleaning and no maintenance carried out. There was the failure to process the insurance claim properly (see above) and to inform him of the reasons why the claim had been rejected (if that was the case). Countrywide arranged for the access to be locked up but he received no letter of explanation. He was not told why or what needed to be done. The water was off. The electricity was off. No work was carried out. The stairs were serviceable and yet access was denied. Mr Collier stated that there was mould on the walls leading up the stairs at one point but no heating was provided. Mr Forbes tried for 2 months after the access was blocked to contact Countrywide in order to gain access, but without success. He left messages for Tina Williams to contact him but she did not do so. He wrote to Countrywide. After that he stopped trying until September 2014. In his view Countrywide should have contacted him.

However, he accepted that after his initial attempts to contact Countrywide, he made no further attempts until September 2014 after Crown had acquired the freehold. He received the key in November 2014. Due to his financial circumstances, he had not been able to carry out the repairs to the flat.

50 In their Statement, the Respondents quote Countrywide (in relation to the invoices from Quality Assured Facility Services Ltd (Quality), to which we shall refer later) as saying: "The Leaseholders at Manchester house refused to pay service charges and therefore we were unable to instruct any maintenance works to be carried out at the development". Mrs Haines told us she did not know why Countrywide claimed that there was an undercharge. However, the overall charge of £2,340 was a standard management charge similar to that charged by Management. In response to the suggestion by Mr Collier that the demands did not comply with the Welsh Regulations, Mrs Haines said that she had difficulty accepting that because Countrywide had sent her a copy of the Welsh Regulations. As noted previously, Mrs Haines stated that she had been to Countrywide's offices and looked at its files although she had not seen any of the invoices. Unfortunately she had missed it when sending out the Management demands. Mr Collier assured the Tribunal that the Countrywide demands did not comply. Mrs Forbes produced originals of the demands. There was no accompanying copy of the Welsh notice.

51 At the PTR it was recorded that no invoice had been provided for the amount claimed for stationery, printing and postage and that the Applicants' case was that this should be included in the management charge. Mr Haines, who had attended with Counsel on that day, indicated that the amount would be waived. At B3 T2, there is an e-mail from Tina Williams of Countrywide dated the 21st July in which she states that "Stationery/Postage is not included as part of the management fee is a separate lined item in the budget for issuing budgets along with its accompanying documentation, Accounts and any other letters issued to the development this is a fixed cost of £2.80 per apartment". Mrs Haines suggested said that the charge was made because the service charge demands had to be sent out monthly.

52 We were provided with a copy of the Countrywide's "Scope of Works for Manchester House" (B3 T3) which, according to an e-mail from Tina Williams (B3 T2), "shows all the works carried out by [Countrywide] for our client". The schedule sets out the works which are "agreed" as being included in the annual management charge. There is also a list of "Disbursements and Hourly Rates for Professional Works outside the Scope of Works…" There follows a list of "works" with the charges to be applied and an indication in some cases that the charges are "agreed" and others which are "N/A". It includes at section 13.6 an item: "Full accounts to be sent to leaseholders at 10 pence per sheet plus postage". The Accounts comprise 6 sheets. We do not know how much the postage was. However, "issuing Applications for Payment to all contributors" (item 1.4 of the Scope of Works") appears to be covered by the "agreed" management fee.

53 We had no oral evidence from Countrywide justifying the management charges. We have no evidence from Countrywide as to what, if any, additional work was carried out justifying an increase in those charges. We do not have either an invoice for the stationery printing and postage or a breakdown as to what the figure actually comprised.

DETERMINATION

54 When a purchaser buys a property or business and is required under the terms of the contract to purchase the value of the debts owed to the seller, the purchaser will generally seek to discount the value in case of non-recovery of some proportion of those debts. If the seller insists on the debts being purchased at 100% of their face value and will not warrant that the debts are

recoverable in full, then the purchaser must either require an agreement from the seller to provide full assistance in order that the purchaser can recover the debts or it must adjust its bid to take account of the possibility of limited recovery. It is all very well for Mr Watts to say that he had no reason to think that Countrywide's figures were incorrect and that he had to accept the figures he was given. As we have already noted, he is an experienced businessman. His company has acquired leases of houses and flats previously. He cannot fail to have been aware that there was a risk of issues concerning past service charges. The extent of the arrears would have alerted Crown to the fact that there were problems at the Property.

55 Crown has come to the Tribunal faced with a challenge that Countrywide's management charges were not reasonably incurred. It has produced no witnesses and no evidence justifying the charges. The Schedule is simply a list of works which would be included in the management fee negotiated with Regis. It is not evidence that all these tasks were actually carried out. Some of the tasks were clearly not appropriate, eg "2 Staff Management" and under 5 "arranging and attending the annual meeting with all Legal Owners" and "attending number of meetings per year with Legal Owners…" . We accept Mr Forbes' evidence that there was only limited correspondence from Countrywide, no gardening, no cleaning and no maintenance carried out. The accounts bear this out. Apart from two invoices from Quality Assured Facility Service Ltd for sealing the entrance to the staircase and subsequently allowing the loss adjusters access, there are only the accountants charges, the electricity charges and Countrywide's own fees shown in the 2012 accounts (B2 T9(a)). Undoubtedly, Countrywide will have spent some time in trying to sort out the insurance, although Pier Management was generally responsible for that. Again, we accept Mr Forbes' evidence concerning the way in which the Property was managed. Countrywide submitted Mr Forbes' claim - and indeed submitted one itself. However, the lessees were not informed of the progress of the claim, nor were they informed that the claim had been rejected (if that were the case), nor were they informed of their rights in the event of the claim being rejected. They were kept completely in the dark. Countrywide complained that the lessees were not paying their service charges. With all due respect to Countrywide, considering the manner in which the lessees were treated it comes as no surprise to us that the lessees would adopt that approach. However, the reluctance or refusal of the lessees to pay the service charges does not mean that the lessor can refuse to carry out its management functions. After all, as Mr Collier pointed out, not every lessee was in arrears. His predecessor was in credit in the sum of about £500.

56 We recognise that in the real world, lessors are reluctant to fund maintenance and repairs when some lessees are not paying their service charges. We are also aware that managing agents who have well established and mutually profitable arrangements with lessors are equally reluctant to press lessors to fund such repairs and maintenance. Lessors who are frequently only interested - as Mr Watts said - in the ground rent return, will seek to pass the responsibility on the managing agent.

57 Certain basic management tasks have clearly been undertaken. An estimate of service charges (for 2013) was prepared and sent, demands for 2012 charges were sent (possibly without the correct notices, a matter which we shall address later), accounting records were maintained and sent to the auditors. There was also some contact with the insurers. The accounts were distributed. In our view, however, on the basis of the Applicants' evidence, which we accept, the standard of management fell well below the standards we are accustomed to considering. We find that the management services provided by Countrywide were not of a reasonable or acceptable standard and that the combined charges of £2368.20 were not reasonably incurred. Allowing for the fact that basic management functions were carried out, we do not believe that it would be fair or reasonable to disallow all of Countrywide's charges. We have concluded that the sum of £1,000 would be the amount reasonably incurred for the services provided. We therefore DETERMINE that the amounts

of £1560, £780 and £28.20 were not reasonable incurred but that the amount of £1,000 was reasonably incurred.

Audit fees - £456.00

58 Although it was recorded at the PTR that there was an issue as to the amount of the audit fees, Mr Forbes told us that he was not arguing about the amount of the fees. Mr Neild was not present to raise any issue. None of the others present had any comments to make. We therefore DETERMINE that these charges were reasonably incurred.

Electricity - SWALEC - £236.53

59 There are some invoices within B2 T9(a) which we were unable to follow. However, the Applicants accepted the audited figure of £236.53 and we therefore DETERMINE that these costs were reasonably incurred.

Fabric Repairs & Maintenance -Quality Assured facilities Ltd - £72.00
- £171.00

60 These two invoices (B2 T9(a)) are both dated the same day - 25th September 2012. The first is for attending to give the insurance loss adjustor access to the building (£60.00 plus VAT) and the second for the provision of a hinged board to the front door of the access to flats 7-10 together with a steel padlock (£143.00 plus VAT). The references for the two invoices (069/210912 and 068/290812) confirm what one would have expected that the work for the first invoice (allowing the loss adjusters access to the staircase) post-dates the second. The issue for Mr Forbes was not so much the amount of the invoices but the fact that the costs were incurred in the first place. Mr Forbes stated that if the Property had been insured properly the costs would not have been necessary. According to the Respondents one of the reasons why the door was boarded up was to prevent access by undesirables. The issues relating to access are the same as those recited earlier and there is therefore no necessity to repeat them. In their Statement, the Respondents point out that in a letter dated 4th November 2013 addressed to the "Leaseholders" (B3 T19) Mr Collier comments that the managing agents "were probably within their rights to seal off the communal access to flats 7 to 10 on health and safety grounds as there were and still are Hyperdermic (sic) Syringes (needles) lying about in flat 10, so Countrywide have incurred the legitimate expense of travelling to and arranging to seal off the building etc".

DETERMINATION

61 The first of the invoices in the bundle was to allow the loss adjusters to visit the Property. The insurance claim was, in September 2012, still work in progress. The boarding up of the entrance took place in August 2012 after the boiler theft. Mr Thornton (the e-mail address is the same as on the e-mail dated 24th September 2013) informed Mr Forbes of that incident on the 16th July 2012. In his e-mail to Mr Forbes, he suggested to Mr Forbes that "I believe that the flats are currently insecure so it is possible [the perpetrators] will return to do further damage. I suggest that you contact Tina Williams to report this and get her to make emergency repairs to secure the communal doors and provide new keys". He added that he had left a message for Ms Williams but she might still be on holiday.

62 We have concluded above that the insurance issue was not so much a failure to insure the Property correctly, but the failure to notify the lessees of the terms of the policy. There is no suggestion that, at that point, the claim would be rejected. After all, Ms Williams had e-mailed on

the 6th July 2012 that the claim was still being progressed. Bearing in mind Mr Thornton's comments at the time and Mr Collier's subsequent comments, it does not seem to us to be unreasonable to board up the entrance as a temporary measure. Countrywide's fault was that it did not pass on keys or codes to all lessees. Futhermore, Countrywide did not take steps to repair the common access. Whether or not the insurance claim was accepted or rejected, it was not good management to leave the common access unrepaired. Whilst we can appreciate the reasons for Mr Forbes' challenge, we DETERMINE that these costs were reasonably incurred.

SUMMARY

63 The amounts claimed were:

Insurance	£2,421.90	
Service costs	£3,304.33	
TOTAL	£5,726.23	£5,726.23

We have determined that the following costs were reasonably incurred:

Insurance	£1,683.10	
Management	£1,000.00	
Audit fee	£456.00	
Electricity	£236.53	
General repairs	£243.60	
TOTAL	£3,619.23	£3,619.23
Amount to be credited		£2,107.00

WE DETERMINE that Mr Neild and Mr Forbes are entitled credits in respect of each of the flats they own in the sum of £210.70. Mr Forbes is also entitled to further credits in respect of the amounts paid namely £180.25 in respect of each of Flats 4 and 8. Any amount payable by Mr Forbes in respect of flat 8 is subject to the final determination or agreement of the correct balance of his account after taking into account any credits arising from the resolution of the insurance claim issue.

THE 2013 ACCOUNTS - REGIS

64 As the Property was sold by Regis to Crown in August 2013 and as the accounts have not been consolidated, we consider that it is easier to split out decision dealing first with those costs incurred up to the change of ownership and those after the change. The summary of the costs together with some of the supporting invoices are to be found at B2 T9(b).

Management Fees - *Countrywide Management- £1,228.56*
- *Stationery Printing and Postage - £32.40*

65 The summary page (B2 T9(B)) indicates that Countrywide claimed 6 items of expenditure each of £204.76. However, invoices have only been provided for the period May to August 2013. There is again no invoice for the stationery printing and postage. The arguments are in effect the same as those rehearsed in respect of the 2012 Accounts except that in this case there are no invoices for January and February 2013. There is no explanation for this omission.

DETERMINATION

66 It is difficult to accept the credibility of an expenditure summary when the managing agent's own invoices do not tally with that summary. We cannot see that Regis or any lessor would be willing to pay for a management service without an invoice. As with 2012 Accounts, we have no oral evidence as to what was done to justify the charges and on the basis of the documents provided, Countrywide did even less in 2013 that it did in 2012. Apart from the electricity charges and their own charges there is only one invoice (from Lockings). No accounts were prepared. No repairs or maintenance were carried out. Countrywide does not appear to have been proactive in seeking to resolve the insurance issue. Again we accept the evidence of Mr and Mrs Forbes. We acknowledge that the on-account charge would have been demanded and the few payments made recorded. There may have been some time expended in respect of the insurance issue. However, we have no evidence. With Crown having paid Regis in full for the arrears, Regis, Pier Management and Countrywide appear willing only to send the occasional e-mail or request someone else to do so. That is not giving the Applicants a reasonable opportunity to question the information provided. Again, we do not have an invoice for the stationery, printing and postage or a breakdown as to what the figure actually comprised.

67 On the basis of the evidence, for the reasons expressed above and in respect of the 2012 Accounts, we are not satisfied that either the management charges or the charge for stationery, printing and postage were reasonably incurred. We consider that an amount of £600 was reasonably incurred.

Professional Fees *- Lockings Solicitors - £180.00*
- Regis- Budget approval - £60.00

68 The invoice from Lockings (at B2 T9(b)) refers to "initial letter and searches" in relation to Flat 6 - "Leaseholder Mr Neil D Spence". At the PTR, the Applicants identified the following as their concerns with the fees charged by Lockings: "the work done, and if it were for the collection of service charges whether the correct notices had been served accompanying the demands, and the amount of the charges". In paragraph 12b of the Statement, the Respondents state that "details provided indicate that the property (ie Flat 6 as mentioned in the invoice) had been sold and the transfer notices had not been provided to the Freeholder. Quality Solicitors were instructed to identify the name and address of the new leaseholder. The cost included an initial letter and searches with the Land Registry."

69 In evidence, Mrs Haines said that Countrywide had wanted to know the identity of the leaseholder. There was some question as to whether it was Mr Spence or a Mrs Thornton. In answer to Mr Collier she explained that the original reason for Countrywide instructing Solicitors was to recover arrears. Mr Collier argued that as the claim was against Mr Spence the other lessees were not liable for the costs incurred. It was not necessary for Countrywide to seek legal advice. They could have searched the Land Registry themselves. Mr Collier and Mr Forbes argued that the correct bilingual notices were not served upon the lessees with the demands. As stated earlier, Mrs Forbes produced an original invoice from Countrywide which did not have the correct the bilingual notice attached - only the English version. To counter this, we have the evidence of Mrs Haines referred to above. Further, the Respondents produced an e-mail from Tina Williams which states (B4 T7a P31): "…please find attached one of the demand bundles that was issued to the leaseholders at Manchester House. I can confirm that each time an application for payment is issued a copy of the Summary of Tenants Rights and Obligations is sent in both Welsh and English". There followed in the bundle at B4 T7b PP34-43 copy letters to Mr Spence, Mr Forbes, Mr Walker and others dated the 9th April 2013 enclosing a summary and a demand. At B4 T7c PP44-45 there is

a version of the English version summary, at B4 T7d PP46-55 copies of the on account demand and at B4 T7e PP56-58 a copy of the Welsh version. They are in different sections of the bundle. The documents are not collated in such a way as to indicate what was actually sent out to each lessee. What is surprising, however, is that at B4 T7e P58 the Welsh version is described as having been created with Win2PDF followed by "the unregistered version of Win2PDF is for evaluation or non-commercial use only. This page will not be added after purchasing Win2PDF." We find it difficult to accept that this is the version that was actually sent out month after month to all lessees. Of course, there was no direct oral evidence that it was. Lockings' invoice is dated the 1st February 2013. It does not say when the work was carried out, nor does it give a breakdown of the work carried out. It merely refers to "initial letter and searches" relating to 6 Manchester House (Mr Spence).

70 The issue of the charge for "Budget approval" was raised at the PTR with the suggestion that this should be included as part of the costs of general management. Countrywide's response is in the Respondents' Statement at B3 T1. At paragraph 12 (c), it is explained that "this was a fee charged by the freeholder Ground Rents (Regis) Ltd for overseeing the budget for approval. This is the instruction given by the client and is an external cost to Countrywide Management." There is no invoice to support this charge.

DETERMINATION

71 We again accept the evidence of Mr and Mrs Forbes and Mr Collier that the Welsh version was not included with the demands. They provided direct evidence and notwithstanding our concerns about Mr Collier's conduct during the hearing, we consider that he and Mr and Mrs Forbes were telling us the truth. We believe that it is extremely unlikely that when we asked to see the summary at the hearing we would have been shown what appeared to be an original set of documents, with the Welsh version already removed. We regret to say that we do not accept the evidence of Mrs Haines. As mentioned earlier, it is simply not credible that someone who gave us the impression of being competent at her job would have consistently overlooked something as vital as the Welsh version if she had been become aware of it because Management's income stream depended on the correct notices being served. Further the fact that the Welsh version included in the bundle was a "trial" version raises the suspicion that what we were shown in the bundle was not a copy of the original. We also note the carefully worded e-mail from Ms Williams. She says that the summary "is sent in both Welsh and English" (our underlining). Not "was". We have concluded therefore that the Welsh version of the Summary was not sent with the demands. That means that the service charges were not payable until those demands were sent accompanied by the Welsh and English versions of the Summary. The "initial letter and searches" were the start of the recovery process. However, at that point Mr Spence was under no obligation to make a payment. Neither was any other lessee. Countrywide had no right to seek recovery until the service charges were payable. These costs should not have been incurred at that time. We DETERMINE that they were not reasonably incurred.

72 In any event, we have not been given a breakdown of what work was carried out, who did it and at what hourly rate. We do not accept Mr Collier's proposition that a lessor should not consult a Solicitor to obtain office copies of a lessee's title to check the details of the registered proprietor and any mortgagee. Nor is it unreasonable for the lessor to instruct a Solicitor to start the recovery process with a letter before action or to the lessee's mortgagee. However, the lessor must not expect the defaulting lessee to pay any more than it would have to pay. We certainly cannot see Regis being willing to pay £150 plus VAT for a letter and land registry office copies. On the basis of the very limited information we have, we do not consider the amount of the charges to have been reasonably incurred and something more in the region of, say, £60 plus VAT would have been more reasonable. Nor do we accept that such costs can only be levied against the defaulting lessee as

Mr Collier appeared to be suggesting. Of course it is good practice to seek to recover such costs as administration charges from the lessee. However, that is not always possible which is why most leases allow for unrecovered costs to be passed through the service charge (see paragraph 16 of the Fifth Schedule of the lease at B3 T7 page 17). It is in the interests of the lessees as a whole that service charges are paid and that managing agents take steps to ensure compliance with the terms of the lease. The lessor cannot be expected to fund such actions out of the ground rent and so provided the lease makes provision for doing so, it is reasonable for such costs, where reasonably incurred, to be charged through the service charge. In this case, we do not consider the costs to have been reasonably incurred for the reasons expressed above.

73 Furthermore, we do not consider that the charge by Regis for approving the budget to be reasonably incurred. After all, it is Countrywide which is carrying out a service for Regis. Countrywide is the agent and Regis is the client. The client may wish to be kept informed about certain topics, such as the proposed budget, but that is in its role as the freeholder. Clients do not normally charge their own agents for being consulted. Regis has employed Countrywide to manage the Property under terms of the lease. After all the maintenance expenses are referred to as "moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor…" (Fifth Schedule of the Lease on page 15 at B3 T7). The charge is not "expended or reserved" by the Lessor. It is a charge it has itself created. As such, it is not in our view payable by the lessees. We have no invoice to justify the cost. We have no evidence as to who approved the budget, what level of management such a person held, what was the basis of the charge, how long it took. After all, the lessees are paying Countrywide's fees for preparing the budget. This was done in November 2012 for the 2013 budget (see the Estimate). The fact that there is no invoice and that the charge is not included in the details of the 2013 budget suggests to us that this is an afterthought. WE DETERMINE that this charge was not reasonably incurred.

Electricity - SWALEC - £77.96

74 There are some invoices within B2 T9(a) which again do not appear to add up, albeit the difference is pence. The Applicants accepted the figure of £77.96 and we therefore DETERMINE that these costs were reasonably incurred.

Insurance - QBE - £879.07 (£773.00)

75 The Applicants' concerns, as indicated at the PTR, were that there was no evidence that the premium had been paid to the insurer and, even if it had, the insurer would decline to pay in respect of a claim. As referred to above, Mr Forbes stated that he had requested a copy of the policy and a receipt for the premium but had received neither. Mr Collier was concerned that the Property was not insured when Mr Walker bought it. The lessor was responsible for insuring. The lessees could have taken action against the lessors if the insurer had refused to pay a claim. Mr Collier considered that the conditions imposed by the insurers were not justified. There was no proof that the insurers had been notified that some of the flats were unoccupied and therefore the insurers could have rejected the claim. Mr Forbes had paid the premium for both his flats in November 2013. Mr Walker was entitled to a credit at the time he purchased the flat.

76 At B2 T10(f), there are two certificates of insurance. The second of these is dated the 7th February 2013 from QBE indicating that cover was arranged for the Property from 22nd March 2013 to 21st March 2014 on an "All Risks" basis but subject to the terms, conditions and exclusions set out in the policy document. The premium is quoted as £2,182.73 (including IPT). The first of the pages (at B2 T10(f))is dated the 20th August 2013 giving a credit of £1,303.66 (including IPT) representing a "pro rata premium due following cancellation). The net amount for the period of

insurance was £879.07. However, the amount actually charged by Pier Management was £77.30 per flat and this was the amount which was paid by Crown and the extent of the debt assigned. We were not given a copy of the policy, nor were the parties.

DETERMINATION

77 Again, whilst we have considerable sympathy for the Applicants as a result of Mr Forbes' experience, we are satisfied that the Property was insured. We are also of the view it is most probable that the policy was of a type generally available. By now of course the lessees would have been aware of the conditions generally attached to such policies although it seems to us remarkable that the neither Countrywide nor Pier Management provided full details of the cover and conditions. We have concluded that, as before, the real issue was one of management particularly bearing in mind the issues faced by the lessees. Whilst it may have been inconvenient and costly to abide by the policy conditions if a flat was empty, it was not impossible. WE DETERMINE that the premium paid by Crown to Regis and charged to the lessees, namely £773.00 was reasonably incurred.

SUMMARY

78 The amounts claimed were:

Insurance	£773.00	
Service costs	£1,578.92	
TOTAL	£2,351.92	£2,351.92

We have determined that the following costs were reasonably incurred:

Insurance	£773.00	
Management	£600.00	
Lockings	NIL	
Regis	NIL	
Electricity	£77.96	
TOTAL	£1,450.96	£1,450.96
Amount to be credited		£900.96

79 WE DETERMINE that Mr Walker, Mr Neild and Mr Forbes are entitled credits in respect of each of the flats they own in the sum of £90.10.

THE 2013 ACCOUNTS - CROWN

80 The accounts relating to the period from the 15th August 2013 to the 31st December 2013 are to be found at B1 T1(c). The supporting invoices are at B1 T1(b).

Management Fees - *Management - £472.60*
- *Administration - £322.00*

81 The issue of management fees relates to the quality of the management and the amount charged. Many of the points in Mr Forbes' evidence referred to in respect of the 2012 Accounts are applicable here. His evidence is supported by Mr Collier. These issues are addressed at B2 T10(a)(also at B3 T14). The brief statement was prepared by Mr Haines and in evidence he confirmed its contents. The basic management fee covers estimating the service charge budget, the

invoicing and collection of service charges, payment of contractors and organising minor works - although such works can be time consuming and by agreement with Crown additional fees may be charged. The basic fee also covers dealing with the lessees, any emergencies and the regulation, cleaning and maintenance of the communal areas. In a letter to Mr Collier dated the 16th December 2014, Mr Haines stated that Management had "corresponded with both you and other leaseholders on numerous occasions…and on occasions telephone conversations…repeatedly sent out notices of intentions with regard to what works need to be carried out along with the request that once the service charge account has funds these works will be carried out…consulted on numerous occasions, obtained estimates, liaised with the local authority and as you acknowledge have had works carried out. We have also responded to your request to have blocked drains attended to and intervened in a dispute with a fellow leaseholder". Mr Collier, in evidence, said that he had told Mr Haines that Mr Burns was locking fire doors in August 2014 but this was not dealt with until 2015. The statement at B2 T10(a) also states that the fee will cover dealing with lessees' breaches of leases and the obtaining of any statutory reports and assessments as well as transfers of any of the flats. The administration costs (B2 T10(c)) are for answering letters, telephone calls and e-mails where they are not covered by the basic fee. Management has prepared a schedule for both 2013 and 2014. The former includes £100 for a letter of introduction following the acquisition of the Property by Crown and £100 for the first consultation letter in connection with proposed repair work. There are also two letters to Mr Neild and one to Mr Forbes charged at £25 each. We have noted that the accounts contained in B1 T1(a) refer to letters charged at £25 to both Mr Neild and Mr Forbes. A charge is also made for 72 e-mails at £1 each. In its Statement the Respondents explain that although the letter may have been sent by a particular member of staff the letter was compiled by the person indicated in the schedule. Mr Collier argued that if management did nothing, people complained. If Management had carried out work to the Property, that would have reduced its work load. The Respondent's counter-argument was that, in particular, Mr Collier wrote long letters and the lessees at the Property were not easy to deal with. Mr Watts explained that Crown had paid out a lot of money on completion and consequently, Management was reluctant to commission work as no funds were available.

82 The Respondents also mention in their Statement that they have made enquiries of local agents who have quoted £200 and £250 per leaseholder per annum if management was straightforward. However, when given the history of the Property, the agents indicated that they would not wish to take on the work. When cross-examined by Mr Manley, Mr Forbes told us he had not received the letter from Management dated the 2nd October 2013 (explaining that in order to gain access to the common staircase, it had been necessary to remove the lock and replace it and that Mr Collier and Martin Richards Estate Agents held keys). He accepted that he had only asked Management for a key in September 2014 and received in it November 2014.

DETERMINATION

83 Once again, we can understand the Applicants' annoyance and frustrations concerning the management of the Property and the understandable desire to withhold service charges as a means of encouraging Management to carry out necessary repairs and maintenance to the Property. Unfortunately, such an approach often has the opposite effect. Nothing is done and all trust between the parties breaks down. When Crown acquired the Property and Management took over responsibility for its management, the trust had already broken down and it was inevitable that the Applicants would view the actions of both Crown and Management critically. Sadly, the issues from the previous management were not resolved, and to a certain extent have been exacerbated by the management policies instigated by the Respondents. No work was carried out to the Property. Apart from the electricity charges and the insurance premiums, the only other expenses are payments to the Respondents or "associated" organisations.

84 There is no question in our minds that a reasonable and responsible manager would have set about trying to restore the Property so that the lessees could either live there or let out their flats. Instead the emphasis appears to have been to have been to recoup the service charge arrears which Crown paid to Regis on completion. For example, looking at Mr Walker's accounts in B1 T1, on the 15th August 2013, Mr Walker has a credit balance of £779.84 with a debit shown of £25 for the Ground Rent. On the 1st October 2013 and again on the 23rd October 2013, the Respondents are sending "legal letters" presumably for the insurance costs which in Mr Walker's case are amply covered by the credit. As Mr Watts told us, he was only interested in the ground rent. He was not interested in management. Crown had spent a lot of money and was therefore reluctant to commission any work. However, as Mr Collier pointed out, not every lessee was withholding the service charge and Mr Walker was actually in credit.

85 As far as the management charges are concerned, we have to take into account that properties with smaller numbers of units do not have the same economies of scale as larger properties so management charges tend to be higher per unit. Also, conversions tend to require more in the way of management (eg on maintenance) than purpose built blocks. Quotations in the region of £2,000 do not surprise us - £2,500 would, in our opinion be on the high side - and bearing in mind the reputation of the Property, it is not surprising that managing agents would be reluctant to take on the responsibility and any who did would almost certainly insist on the lessor funding agreed repairs and maintenance as a pre-requisite. However, we must also take into account that the actual management tasks are not onerous and during the period under consideration, none were carried out. There was no gardening, cleaning, window cleaning, repairs, maintenance; only the routine tasks of invoicing and accounting. There is some merit in Mr Collier's argument that the reason why management was troubled was because of its own management failings.

86 We can see no justification for the "administration" charge. The tasks quoted are not extras but part of the normal day to day management of a block of flats. It is unreasonable for Crown and Management to charge each lessee £12.50 for sending out a standard letter introducing themselves as the new freeholder or agent. One of the reasons given for the subsequent s20ZA application was that Management could not be certain of the ownership of some of the flats. If Management was uncertain, why start and then abort the section 20 process? In any event Management goes on in the following year to charge for its role in dealing with the repairs. We are not satisfied that an additional charge of £100 for sending out 8 copies of a notice informing the 8 lessees (2 lessees each owned 2 flats) is justified. It was assumed that the 2 charges of £25 each for Mr Neild and Mr Forbes were for reminder letters of some sort. Some such letters are charged for in their individual accounts as administration charges. We do not see why they should be added as part of the service charge as well - and if these particular letters are in addition to those invoiced, they should have been charged to the individual lessee and not the general management charges. Of course, if it appears unlikely that the Respondents will be able to recover the costs from the individual lessee, we can see an argument for recovering them through the service charge. Although Mr Collier gave evidence that Mr Neild may not be in a financial position to pay, he considered that the mortgagees would pay rather than risk forfeiture of the lease. We were given no reason as to why the costs should be charged against the lessees as a whole. Further we have no evidence that the e-mails charged at £1 each are over and above the normal management function for which the management fee is paid.

87 We DETERMINE that the management and administration charges of £794.60 (£472.60 + £322) were not reasonably incurred. but that the charges of £472.60 were reasonably incurred.

Accounting fees *George Lloyd - £240.00*

88 Mr Forbes was concerned that Mr Watts' brother, Mr Michael Watts, had signed the accounts on behalf of George Lloyd. He was therefore not independent as he was also the company secretary of Management. His qualification of FMAAT AAT was also queried. Mr Collier had no issues. There appeared to be no issues relating to the amounts and we were given the impression that the Applicants accepted that the charges were reasonable. However, in their written submissions, Mr Forbes, Mr Girijan and Mr Evans comment that in their view the accounts have not been issued correctly by reason of Mr Michael Watts' association with both George Lloyd and Management. It was not really canvassed by either party how this affected the actual figures in the accounts or the cost of preparing the accounts. It may affect Mr Watts' ability to give a certificate as an independent accountant, but we have the copy invoices and the Applicants did not draw to our attention or to the Respondents' attention any discrepancy relevant to the issues we were asked to determine. We do refer to a discrepancy in the amount of the ground rent later in this decision, but that is not an issue for us. If the Applicants had wished to take issue with regard to the choice of Mr Michael Watts to prepare the accounts, then it was not an issue for us. It was never suggested in evidence or argument that the amount charged should be reduced or disallowed. At the PTR the Applicants raised as an issue regarding the quality of the accounts, their late delivery and the amount of the charges. It is correct to say that the 2013 accounts are dated the 28th March 2014 (within the 3 month time scale set out in the lease) but that they were only sent out on the 17th July 2014 raising the suspicion that the accounts were back-dated to give the appearance of their having been prepared within the lease's time scale. However, apart from responding to a few questions about Mr Michael Watts' relationship and his qualification, there was very little, if anything, said on the subject. The Respondents do not appear to have regarded it as a material issue either in evidence or in their submissions. Accounts had to be prepared. They achieve their objective in that they provide information regarding the service costs. The lease (B3 T7) refers to the employment of a "qualified accountant". It does not say "as defined by" the Act. It does not prescribe the nature of the accountancy qualification. It is arguable that preparation of accounts is part of the general management. It is not unreasonable for them to have been prepared by someone with knowledge of accounts and if that knowledge is not available within the management organisation that the task can be carried out externally and paid for through the service charge. In the absence of any substantive evidence or argument to the contrary, WE DETERMINE that these costs were reasonably incurred.

Property Building and Fire Assessment - Nova Industry Ltd - £250.00

89 The invoice at B1 T1(b) describes the work carried out by Nova as: "To inspect property known as Manchester House…To provide report of the same". Mr Watts told us that the invoice was for his visit to the Property in 2013. He conducted a survey of the damage. He made two visits. The Blaenau Gwent Council had asked him to attend as a representative of the freeholder - he is a director of Crown. The Council required work to be carried out as a result of the flood. The only area concerned was the communal area. It had no jurisdiction in the flats. He would not normally have attended. However, some flats were damaged. One of the lessees had become bankrupt. He had 53 years' experience in the building industry. He was a master builder with qualifications in City and Guilds. He considered that he was qualified to report on the building's condition. HM Revenue and Customs allows a mileage rate 50p per mile. It was a 500 mile round trip. After his visit, he produced a report which was sent to the leaseholders. Management had given a list of the addresses for the residents and the report was sent to those addresses. Mr Watts drew our attention to the letter dated the 2nd October 2013 at B3 T17 which in effect incorporated his report.

90 Mr Watts explained that they worked through different companies. The invoice was in respect of his visit. It was only possible to assess the damage after seeing it. He could not

remember if he had visited the Property before the auction. He was unable to gain access to the flats. The door was blocked up. He and his brother usually went to the auction to bid. Crown was only interested in the ground rent of £2,500 pa. It had no interest in the management. Crown had bought freehold investments previously without seeing the properties. He would be happy with a right to manage company, but the lessees would need to agree. He claimed that had not been aware of management problems when Crown bought the Property. However, he knew that there were arrears of £10,000 - £12,000. Countrywide had not been paid. Crown had paid them on completion. He had had to accept the figure given and could not argue against it. He did not know about any claims for redress against Countrywide. The accounts were usually prepared by chartered accountants. He was also aware the Property was boarded up. The only reason for his visit was because the Property needed work. If there had been no flood damage he would not have gone. Crown has 30-40 developments. He has only visited 5 of them. These include blocks of flats as well as houses. Crown buys them for the ground rents.

91 It was pointed out to Mr Watts that the documentation relating to Blaenau Gwent's involvement commenced in July 2014 (see B2 T10(e)) and not 2013. He accepted that he had been mistaken in stating that his attendance had been requested by the Council. He was also asked why the date of the invoice was 2nd September 2013, when according to the letter of the 2nd October 2013 the meeting occurred on the 27th September. According to Mr Watts, the date was wrongly stated on the invoice. He did not consider that it was dishonest to charge for preparing a report when it was a letter to the leaseholders. He had signed the letter on behalf of Management. He accepted that the Respondents had appointed Mr Martyn Richards as a local agent to look after the Property. He still needed to look at the Property. Mr Collier suggested to him that the purpose of the visit on the 27th September was to look at what he had purchased. Mr Watts indicated that Mr Collier had shown him around. Mr Spence was in receivership. The owners of three flats were in receivership although he accepted that the mortgagees were not in receivership. He knew Mr Neild was ill. He was not in the business of taking people's possessions. The lessees had asked him to attend. He wanted to see what damage had been done to the flats. The object of attending was not just to look at the communal parts, but at the flats as well. The condition of the flats affected the communal areas. However, there were no funds available to do any remedial work. If he had not attended, he could not have instructed builders. It would have cost between £1,000 and £1,200 for a surveyor to prepare a report.

92 In response to questions by Mr Girijan, Mr Watts said that when there is a transfer of a lease, the transferee has to abide by the lease. The transferee has to give notice to the lessor. Until that is done, the transferee is not entitled to take up occupation. After the lunch break, and no doubt having taken advice on the matter, Mr Watts accepted that this was not correct.

93 Mr Collier confirmed that he had attended the meeting with Mr Watts. He told us that Mr Watts had come to view the Property. The meeting was amicable. Mr Watts had asked a lot of questions which Mr Collier had answered. They had looked at the common areas and flats 2,3,7,8,9 and 10. Mr Collier was not sure about number 4. He had pointed out to Mr Watts the things which needed doing. Before the leak the flats were in a reasonable condition. Mr Watts never mentioned a previous visit. He was convinced that it was Mr Watts' first visit. He was visiting to look at what he had bought. He did not consider that it was reasonable that the Respondents should charge for this visit.

DETERMINATION

94 As indicated above, we did not regard Mr Watts as a reliable or credible witness. He could not remember whether he inspected the Property before purchase. He told us that he had been

asked to attend by the local authority when it was apparent from the documents that the council did not become involved until many months later. The invoice stated that a report, (suggesting to us and the Applicants a professional report for which a fee could reasonably be charged) had been prepared but there was never any such report. It was apparently a letter addressed to the lessees. That letter, (B3 T17) is dated the 2nd October 2013 and cannot properly be regarded as a professional report despite the fact that it refers to itself as such. It contains details of certain issues which need to be addressed, but it is as much about the condition of the individual flats as it is about the common parts. It also refers to a meeting which took place on the 27th September 2013 with Mr Collier and a representative of the local estate agent. The fact that the invoice predated the letter by a month was explained as a mistake.

95 We are not satisfied the Respondents' explanation. Mr Watts is a shrewd businessman. The prepared statement (B2 T10(d)) was brief but his explanations in evidence were unconvincing. Of course a surveyor would have charged more for a professional report. Mr Watts may be an experienced builder, but he is not a qualified surveyor. He justified his charges on the basis of the mileage allowance of 50p per mile. We have concluded that this was Mr Watts' first visit to the Property. He was inspecting what his company had bought which was why the insides of the flats were inspected as well. Certainly he was assessing what needed to be done to the common parts but the letter to the lessees was also a warning that heavy expenses were on the way and that mortgagees might need to be prepared to fund the works. Mr Watts had told us that he was not really interested in managing the Property, so it is difficult to see why Mr Haines was not present. What Mr Watts achieved as far as the common parts were concerned was no more than Mr Haines could have discovered on a management visit. There was no necessity for Mr Watts to attend. We DETERMINE that these costs were not reasonably incurred.

Electricity - SWALEC - £38.10

96 There is an invoice at B1 T1(b). The Applicants have accepted the figure of £38.10 and we therefore DETERMINE that these costs were reasonably incurred.

Insurance - Fox Insurance Services - £448.20
£1.730.39

97 Although Mr Collier was initially concerned that the insurers may not have been given correct information concerning the occupancy (or rather the unoccupancy) of some of the flats, he subsequently expressed himself satisfied. During the hearing, he changed his mind again. The issue was not the amount of the premiums but whether the Property was covered. The other Applicants present raised no query. Mr Collier based his argument on the fact that the lessees were not paid after the escape of water in 2012. It was the freeholder's responsibility to insure properly. It was important for the Respondents to find out the actual reason why the claim was not paid. It was speculation to suggest that it was because Mr Neild had failed to inform the insurer that his flat was empty. He could not say whether the escape of water occurred before Regis acquired the Property. He accepted that if a claim were to be made against Mr Neild, for breach of the insurance conditions, it might not be worthwhile as Mr Neild claimed not to have any money. Management could go to his mortgagees to obtain payment. Crown could forfeit the lease on the flats if mortgagees did not pay.

DETERMINATION

98 With all due respect to Mr Collier, his objection was really caused by the understandable nervousness that people have when they hear of problems occurring with officialdom or large

organisations. Mr Collier wished to be satisfied that the same thing wasn't going to happen again. This nervousness was not helped by the disinclination on the part of the Respondents to provide the Applicants with actual copies of the relevant policies without charging for the privilege, despite the somewhat misleading response in paragraph 6 of the Respondents' Statement that "they have on demand provided a copy of the insurance policy for the premises…" (B1 T1a). The lessor's responsibility is to provide evidence of the "full terms". The Policy Schedules may not include all the relevant conditions. Following an order of this Tribunal, copies of the policies have been delivered and were available for comment at the hearing on the 14th December, 2015. Unfortunately, Mr Collier was unable to attend. The policies set out the terms and the exceptions and it is really up to the lessees to take up any issues direct with the Respondents. It is not the role of the Tribunal to police the management of the Property. Provided the policy complies with the terms of the lease, and is a policy which is normally available for properties of this type, the onus must be on the lessee to draw to the attention of the managers any discrepancies or issues which need to be attended to. The main problem here is, as has been throughout, the failure of successive managements to provide the lessees with all the necessary information, not the policies themselves. We find that the policies and the premiums were such as a reasonable manager or lessor would provide and accordingly, we DETERMINE that these costs were reasonably incurred.

Insurance handling charge - £125

99 This is described at B2 T10(g) as a nominal amount for the administration in arranging and invoicing and collection of insurance amounts. The amount charged is £15 per leaseholder. At the PTR the Applicants sought justification of the charge and the amount. Mr Watts justified the charge on the basis that Management's staff members were employed in dealing with the insurance and that a nominal charge of £15.00 per leaseholder was reasonable. (It is actually £12.50 per leaseholder). In their Compliance with Directions dated 22nd July 2015 (B3 T1), the Respondents say that they are prepared to credit the insurance handling charge for 2014, but in 2013, there were two periods of insurance from 15th August to the 15th October 2013 and then from the 16th October 2013 until the 15th October the following year. The charge was for invoicing and collecting these amounts. It is, however, common ground that the Respondents channelled their insurance through Fox Insurance Services. There is no suggestion that Fox Insurance Services charged a broker's fee.

DETERMINATION

100 We cannot see what extra tasks outlined by Mr Watts or in the Statement (B3 T1) justified an additional charge. Of course, Management has to liaise with the brokers, pass on information to the lessees, invoice, and deal with queries, but that is part of the management function for which it is paid the management fee. What has no doubt made matters worse for Management is its failure to manage the Property in a reasonable fashion to the extent that it has alienated most of the lessees. We do not consider it to be reasonable to charge an insurance handling charge as brokers are involved and so we DETERMINE that this charge was not reasonably incurred.

SUMMARY

101 The amounts claimed were:

Management fee	£472.60
Accounting fees	£240.00
Administration	£322.00
Property etc assessment	£250.00
Electricity	£38.10

Insurance	£2178.59	
Insurance handling	£125.00	
TOTAL	£3,626.29	£3,626.29

We have determined that the following costs were reasonably incurred:

Management fee	£472.60	
Accounting fees	£240.00	
Administration	£ NIL	
Property etc assessment	£ NIL	
Electricity	£38.10	
Insurance	£2178.59	
Insurance handling	£ NIL	
TOTAL	£2,929.29	£2,929.29
Amount to be credited		£697.00

WE DETERMINE that Mr Walker, Mr Neild and Mr Forbes are entitled credits in respect of each of the flats they own in the sum of £69.70

THE 2014 ACCOUNTS

102 The accounts relating to the period from the 1st January 2014 to the 31st December 2014 are to be found at B1 T1(c). The supporting invoices are at B1 T1(b).

Management Fees *- Management - £1,500.00*
- Administration - £1,457.50

103 The arguments raised on both sides are in effect the same as those mentioned in respect of the management fees for previous years. There was no gardening and no cleaning and the failure to maintain the Property meant that the Council had to step in. This forced Management's hand but meant that because of the time constraints it was not possible to select a contractor at leisure leading in consequence to a higher cost than would have been payable if Management had been able to take its time and obtain a range of prices. Mr Girijan and Messrs Evans had specific issues. They had bought their flats in December 2014 and had encountered similar problems relating to their circumstances. The particular issue arises from the fact that they bought their flats after Crown had purchased the freehold from Regis. In each case, Crown had paid on completion a sum of money representing the amount their predecessors in title had, allegedly, owed Regis. Again in each case, Crown attempted to obtain payment of those arrears from Messrs Evans and from Mr Girijan. At the PTR, the Respondents acknowledged that they were not entitled to do so.

104 Mr Kevin Evans told us that he and Mr D T Evans had bought Flat 1 in December 2013. It was apparent to him that no money had been spent on the Property. His account showed that at the time of their purchase there were owed arrears of £1,293. We have a letter from Hatch Brenner, Crown's Solicitors, dated the 9th January 2015 in which they refer to the fact that on the date of the Auction (5th December 2013), there were outstanding arrears. They point out that Mr Evans telephoned Crown or Management, on the 12th December 2013 stating that he had purchased the flat and was told of the arrears with the current statement being sent to him that day. Mr Evans told us he asked for invoices to verify the amount. It was only after this application was issued that the invoices started to arrive. Crown did not accept that Messrs Evans were the owners until May 2014 even though it was aware of the transfer. We have a letter from Messrs Evans' Solicitors dated the

20th May 2015 to Mr K Evans stating that following completion of the purchase, they had not been aware of the lessors' Solicitors, but they had information that Management was the managing agent. They had therefore faxed Management on the 17th January 2014. The fax, they state, was received by Crown at 10.59 on the 17th January 2014. Nothing had been heard from Management until Mr Haines sent an e-mail direct dated the 12th May 2014. Following receipt, Mr Martin, the Solicitor, telephoned Mr Haines and pointed out that his firm had contacted Management by fax using the fax number obtained from management's notepaper used at that time and requesting the contact details. Management had not responded. Mr Haines stated that Management had moved premises about a month beforehand, but that the fax number had not been in use for at least 12 months. Following an exchange of e-mails, the notice of assignment was sent together with the notice fee of £140.

105 In the meantime, Crown was still contacting the previous owner. It added £200 administration charges, the invoices for which were sent to the previous owners. In Mr Evans' view, Management was simply trying to make money out of arrears letters. In November 2014, Mr Evans paid the service charge payments demanded on account relative to his period of ownership. He did not pay any arrears relating to the period before that. There followed a series of letters from Hatch Brenner (who originally acted for the Respondents) and Cozens Hardy (who took over instructions from the Respondents in January/February 2015) from December 2014 to February 2015 demanding payments of those arrears (to which the Respondent were not entitled, as they now accept) and in letters dated the 7th January and 9th January (Hatch Brenner) and 12th February 2015 (Cozens Hardy) the Respondents threatened forfeiture and a further letter of the 14th January 2015 (Hatch Brenner) threatened court action. Mr Evans also mentioned that on one occasion in 2015 he had travelled to Aberbeeg. The flat was, as he conceded, unoccupied. However, the access to the lobby where the meters were situated had been changed and he had not been given a key. He had been unable to access the token meters. Mr Evans queried what Crown had done for its money. The staff did not visit. He did not consider that the fees charged were reasonable for what Crown had done. The Property had not been managed properly. He felt a fee of £50 to £60 per month would be reasonable.

106 Mr Girijan had bought Flat 9 also in December 2013. He had seen the flat before purchase. The access had been boarded up with a padlock, but Mr Collier had let him in. The flat was all right. It was the access that was the problem. He was aware that there were arrears from the previous owner, so he had left £1,000 with his Solicitor pending this being sorted. He expected work to be done, but it was not. There was black mould on the walls and mould on the carpet on the stairs. There was no electricity to the flat or to the common parts. His Solicitor informed him that the freeholders had been notified of the change of ownership and he expected to hear from them. However, the notice and the fee had been sent by Mr Girijan's Solicitor to Pier Management who did not pass it on to Crown or Management. There appeared to be an impasse. Pier Management would not return the notice or the fee or pass them on to Crown. Crown would not accept Mr Girjan as lessee until it received a formal notification and fee.

107 Mr Girijan was not aware at the time of the problem. Whilst he appreciated that he should have chased Management about the repair works, he just assumed that once the work was completed he would be allowed to use the flat. The flat was not let out. He received a letter dated the 15th January 2015 with an invoice for arrears of £4,093.43. Either the next day or the day after, he went to the Property. He could not gain access. The door to the common staircase had been changed and there was a padlock with a key code in place. He phoned his wife and asked her to telephone Management. She was told that Management could not speak to her. It would only speak to Mr Girijan. Management then phoned him on his mobile and told him he could not gain access on the basis that Management did not know who he was. They also told him that he had to

pay the arrears before he would be allowed in and that he would need to send them a new notice. Mr Girijan asked if he could go in and see what had been done but this was refused. Mr Girijan provided us with copies of the e-mail exchanges which then took place between the 9th February and the 26th February 2015. It had been arranged that he would be allowed access on the 10th February. Mr Haines and Mr Watts were going to the Property to inspect it after work had been carried out. In his e-mail of the 9th February, Mr Girijan asked that the keys be made available as he had not had access for some time. At that stage the door to his flat had been changed and he wished to have the key. Mr Haines' response was to explain that he had not heard from Mr Girijan's Solicitor with the notice of transfer "which is a requirement and obligation on the part of the leaseholder to supply along with settlement of the arrears". Mr Girijan was not given the keys. On the 16th February, he received an e-mail from Mr Haines informing him of the arrears situation noting that Mr Girijan had "failed to pay any further service charge invoices in addition to the inherited arrears". On the 23rd February after Mr Girijan had e-mailed saying that he would be paying the arrears since he bought the flat, Mr Haines replied "the most important issue for you to ensure is done is that the formal notice of transfer along with fees and payment of arrears outstanding on the property are settled. THESE MATTERS ARE STILL NOT SETTLED (capitals in original)…As it stands you are in breach of the lease in not issuing notices and settling arrears…As soon as these matters can be resolved we will be then in a position to move forward and issue keys and codes." He wrote further on the 26th February "in connection with the outstanding matters" referring to the fact that "the lack of action on these important matters does place further unnecessary delays in getting the property back to an acceptable condition". In response to a further e-mail from Mr Girijan dated the 26th February, Mr Haines stated that "we will deal with all further enquiries once we are in receipt of the formal notice of transfer and deed of covenant which is a requirement at the time of your purchase of the property. Once you have completed these requirements we will be happy to assist you with any further information you may have." There is in fact no requirement in the Lease for a deed of covenant.

108 Mr Girijan was still not given the code to the communal access nor a key to the flat. His Solicitor reissued the notice and paid Management's fee upon the promise by Pier Management to return the fee paid to them (which apparently had still not materialised). He was still not allowed access. Mr Girijan had paid all his arrears and continued to make the on account payments requested, but the Respondents still wanted the arrears owed by the previous lessee before they would allow him access. Eventually, in April 2015, he contacted the contractors Dawn Construction who gave him the code. He was able to access the flat because the door did not fit properly and so he was able to change the lock. He had to shave the edge of the door to make it fit. If he had been told that the doors needed changing, he would have done the job himself probably at a lesser cost. Generally he was happy with what Dawn Construction did and was willing to accept his share of the bill. In his view the cost of management was high. He considered that the service charges generally should be between £50 and £55 per month.

109 Cross examined by Mr Manley, Mr Girijan accepted that he had been able to gain access straight after the purchase. He was not going to be able to let the flat until the communal work was done. According to Mr Manley, the locks were changed in November 2014, but his first request for keys was on the 21st January 2015 by telephone and in writing on the 9th February. However, if the lessor changed the lock, Mr Girijan expected to be given a key. He accepted that it was necessary for the service charge to cover all the expenses and was willing to pay provided he had value for money.

110 Mr Haines was recalled. He told us that he had been aware that the flat had changed hands at auction on the 5th December 2013. He expected the notice of transfer to arrive but it did not materialize. He contacted the auctioneer and found out the name of the Solicitors acting for Mr Girijan. He tried to contact them. Eventually, the Solicitors told him that the notice had been

sent to Pier Management. The parties became entrenched. The first contact from Mr Girijan was from his wife on the 22nd January 2015. He had explained the need for a formal notice. This was because with this Property, prior to Crown's ownership, there had been a history of unauthorised persons accessing the Property. Also, he had had experience of lessees using different addresses. He did not have a formal request for the keys. When he was asked, he reiterated that Mr Girijan should request his Solicitor to send the notice. He accepted that he must have known who Mr Girijan was and that he may have seen the change of address on the file (he earlier had told us that there was no postal address on the file when he contacted the Auctioneer). However, there was no desperation on Mr Girijan's part to access the flat. Following contact in January/February 2015, he did not release a key because he wanted confirmation of identity. Their records were only altered when formal notice was received. As a default, they might address correspondence to the flat. Notice was received on the 3rd March 2015. Mr Haines conceded that he could have altered Management's records following confirmation from Hatch Brenner. He would have given access to Mr Girijan at that point.

111 In his earlier testimony, Mr Haines had told us that he had not deliberately withheld the key from Mr Girijan to encourage him to pay the arrears. He could have had the key if he had confirmed his identity. He believed that Mr Girijan had to pay the arrears from the previous lessee. However, he denied that he would have prevented Mr Girijan from accessing his flat simply because he owed arrears, although he conceded that the Respondents had half an eye on the fact that Mr Girijan owed money. Other people who owed money were allowed access to their flats. He did not find Mr Girijan's Solicitors helpful. He denied that the carpet on the stairs had not been replaced to encourage Mr Girijan to pay. Mr Collier said that the problem was not the lack of a carpet, but the fact that the old carpet, whilst there, constituted a hazard. Mr Girijan said that his agent had told him he would not be able to let the flat until the new carpet was laid. Mr Evans commented that Mr Girijan's agent may not have meant that there was a safety issue concerning the lack of a carpet, but that no-one would wish to let the flat if the common parts were not carpeted. The Respondents told us that the reason why they had not carpeted the stairs was because a number of the flats needed building repairs (eg plaster work) and that would damage the carpet which would need replacing. The lessees may not be prepared to pay for a second carpet 3 months later. Mrs Haines could not see that Mr Girijan could possibly be prejudiced by the lack of a carpet on the stairs. On the 8th September 2015 Mr Watts told us that the Respondents would indeed put a cheap carpet down as he did not want to deny a lessee a potential letting, but by the hearing on the 14th December, it had not been done.

112 With regard to the Administration charge, our attention was drawn to the comments at B2 T10(a) and (c) and in particular to the list of letters, telephone calls and e-mails listed in the last document in that section. Mr Collier said that he had received 10 or 12 e-mails, Mr Girijan about "15 +" and whilst Mr Forbes was uncertain he suggested it was between 15 and 20 e-mails. Questioned by the Applicants, Mr Haines told us he had visited the Property on 2 or 3 occasions in late 2014 and early 2015.

DETERMINATION

113 We were not impressed by the Respondents. Whether their attitude was as a result of advice received, we are unable to say, but it is evident from what Mr Haines told us that he believed that current lessees were obliged to pay money owed by previous lessees. Counsel conceded that this was no longer the case. However, since that was the prevailing view held by the Respondents at the time and because they had paid the totality of the arrears to Regis on completion, they considered that it was reasonable for them to take whatever action they could to persuade Messrs Evans and Mr Girijan to pay their "inherited" arrears. Combined with Mr Watts' belief (which he

subsequently retracted) that the Respondents were entitled to deny access to purchasers of flats until they received valid notices, the Respondents adopted a hard line, inflexible attitude to the lessees engaging, as we find, in a deliberate policy of threatening forfeiture and court proceedings and generally making things difficult for lessees even to the extent of not providing keys and key codes thereby depriving some of them access, albeit for limited periods, as a means of encouraging them to pay.

114 Mr Haines accepted that the Respondents probably had Mr Girijan's details on file, but made no effort to resolve the problem - which was that Mr Girijan's Solicitor had been told by the seller's Solicitor that the notice of transfer and the registration fee were to be sent to Pier Management. Once the issue was discovered, it was surely not beyond the powers of Mr Haines (or Mr Watts) and Pier Management to resolve the issue by Pier Management forwarding the notice and fee to Management. There was no suggestion that Mr Haines or anyone else from the Respondents made any serious attempt to retrieve the notice or the fee. The onus was put straight onto Mr Girijan and his Solicitor. The application of common sense and a little understanding and good will would have resolved the problem at least from a practical point of view even if Management had to wait for Pier Management to pass across the fee. We do not accept Mr Haines' statement that the Respondents were concerned because in the past they had had experience of unauthorised persons attempting to access property and lessees with multiple addresses. We are not saying that these haven't happened in the past but the provision of a formal notice would not have overcome any identity issues and an exchange of e-mails would have resolved any address issues. The Respondents could simply have asked for an address for service and some sort of identification before releasing the key and code. We find the Respondents' attitude to have been unreasonable and obstructive.

115 In our view the e-mails from Mr Haines are clear. The e-mail of the 9th February refers to the obligation of the leaseholder to supply the formal notice "along with settlement of the arrears". That of the 16th February refers to Mr Girijan's failure to pay his own service charges "in addition to the inherited arrears". Even after Mr Girijan had paid his own service charges Mr Haines was (on the 23rd February) emphasising the "most important issue" of a formal notice of transfer "and payment of arrears outstanding on the property. THESE MATTERS ARE STILL NOT SETTLED". The words of the final paragraph could not be clearer: "as soon as these matters can be resolved we will then be in a position to move forward and issue keys and codes" followed by the threat that "legal costs are still being incurred on this account". We do not accept that Mr Haines had only "half an eye" on the payment of the arrears. We accept Mr Girijan's version, which is totally consistent with the e-mails that the Respondents were not going to allow him access to the flat he had purchased until the "inherited arrears" had been settled. After all, Mr Haines accepted that Mr Girijan's Solicitor had given Hatch Brenner notice on the 3rd March 2015 and he was still not given access. Mr Girijan finally managed to obtain the key code from Dawn Construction.

116 The important point to note is that the Respondents have conceded that Mr Girijan did not owe the inherited arrears; neither did Mr Evans. In fact, as we have found, the correct notices were not served with the demands and so, whilst service charges may have been owed by lessees, the service charges were not payable. The Respondents were seeking to recover money to which they were not at that time entitled. What is more, in Mr Girijan's case, they used the threat of denying him access to the property which he had purchased as a weapon to persuade him to pay up the money which he did not owe.

117 As we have commented above, management of the Property ought to be fairly straightforward. However, there is no evidence of any gardening, cleaning or window cleaning, no regular site visits and, as the Applicants have submitted, maintenance and repair only once the Council became involved. This should not have been necessary. The Respondents should have been

managing the Property. The list of letters, phone calls and e-mails (B2 T10(c)) does not impress us. General correspondence is part of the day to day management of the Property for which the general fee is charged. It is not an extra. So is the sending out of accounts. As Management has charged for the major work to the Property and for the application under section 20ZA, it should not be included as an additional administrative cost. Specific costs for correspondence with a particular lessee are generally recoverable from the individual lessee although we accept that where such expenses are not recoverable, they may be charged to the general service account. However, we had no evidence indicating why such costs ought to be so charged. The correspondence with the Council was only necessary as a result of the Respondents' failure to carry out its own management responsibilities. We have no evidence as to what the "457 Total e-mails throughout the year" were related to. We do not know why they merited a special charge of £457. The same applies to the 15.5 minutes of telephone calls. As was commented before, some of the phone calls and e-mails would in part have been due to Management's own failings and the Applicants' evidence on the numbers of e-mails, although possibly at the lower end of the scale, is in our view more realistic. We are not satisfied on the basis of the evidence that these charges are justified.

118 As far as the management charges are concerned, as before, we have to take into account that properties with smaller numbers of units do not have the same economies of scale as larger properties so management charges tend to be higher per unit. Again, we take into account that conversions tend to require more in the way of management (eg on maintenance) than purpose built blocks. We note, as before, the quotations in the region of £2,000 - £2,500, the latter being in our opinion on the high side. We must also take into account that the actual management tasks are not onerous and during 2014 very little general management was carried out. Repairs were the subject of an additional management charge. There was no gardening, cleaning or window cleaning; only the routine tasks of invoicing and accounting. We must also take into consideration the quality of the management. On the basis of the Respondents' evidence a comprehensive management fee in the region of £2,000 would not be unreasonable for a well-managed property. However, bearing in mind the shortcomings referred to above, we DETERMINE that the management and administration charges of £2,957.50 (£1,500 + £1,457.50) were not reasonably incurred but that a management fee of £1,500 was reasonably incurred.

Accounting fees George Lloyd - £300.00

119 Although some Applicants raised the issues referred to in respect of the 2013 accounts, our views are as set out in that section. The Applicants accepted that the charges themselves were reasonable. WE DETERMINE that these costs were reasonably incurred. We should point out that the accounts show ground rents payable of £3,000. That is not correct. The figure should be £2,500. Ground rents are, however, not an issue for this Tribunal.

Preparation for Tribunal Hearing - £250
Application to Tribunal for dispensation - £250

120 At B2 T10(c), the Respondents explain that the preparation costs related to Management's time preparing the application under section 20ZA which was initiated in October 2014 to dispense with the outstanding formalities in order to carry out the work required by Blaenau Gwent Council. Crown had been served with an informal notice on the 4th August 2014 and a further informal notice in connection with further work on the 13th October 2014 (see B2 T10(e)). The nature of the works will be discussed later. The Tribunal fee was £250. Management's charge also related to the preparation for the hearing and attending a telephone hearing (Mr Watts and Mr Haines). The application was granted.

121 During the hearing, queries were raised about the necessity for making the application when the Respondents had actually begun the statutory consultation. Management knew that work needed doing to the Property when it bought the building. It had failed to do any repairs. This was why the Council issued its informal notices. The Respondents had to act quickly in order to avoid incurring costs of the Council's formal process. It did not have time to obtain take in a range of tenders. Any potential builder would have had to be able to carry out the work straight away. This would have reduced the number of contractors able to tender and the prices quoted would inevitably have been higher. The Respondents argued that the reason why they had not been able to carry out the work was because the lessees were not paying their service charges and there was no money to carry out the work. Mr Collier pointed out that some lessees were paying. The Respondents' also explained that they made the application because there was some uncertainty as to the ownership of one or two of the flats. Again, Mr Collier pointed out that a simple search at the Land Registry would have provided the information. The issue, though raised, was not pursued with much vigour.

DETERMINATION

122 As the issue was raised, we must make our determination even though one or more of the Applicants did not pursue it. When a manager agrees a fee for management of a property, the amount agreed generally covers the normal day to day issues which are associated with the overseeing, cleaning, maintenance, repair, accounts and insurance of the building and its grounds. There will frequently be built in an allowance for regular site visits, meetings with lessees, liaising with the freeholder, dealing with queries and minor repairs as well as other occasional items. The management fee frequently will not cover the cost of dealing with major works or applications to the Tribunal or the courts. This is not meant to be prescriptive in any way and the terms will always depend on what is agreed between the freeholder and the manager as well as the terms of the leases. Our role is to determine that all such costs are reasonably incurred, not whether we would have agreed them in the same circumstances. On the basis that Management was charging £1,500 for its general management, we do not consider it unreasonable for it to charge for the additional work involved in a section 20ZA application, or for the Tribunal fee of £250. We accept the Applicants' argument that it should not have been necessary. It should not. We do not accept the Respondents' case that they were unsure about the correct lessees of one or two of the flats. As Mr Collier said they could easily find out by searching at the Land Registry. However, we can well understand that owing to the history of late or non-payment (whether justified or not) a prudent manager may well consider it sensible to make the application to ensure that there were no disastrous slip-ups which could mean that the manager would be substantially out of pocket. The band of reasonableness is a broad one and we are of the view that the Respondents were within that band when making the application. The amount of the charge of £250 does not seem to us to be excessive for the work involved in making the application and for Mr Haines and Mr Watts to "attend" a telephone hearing. Consequently, we DETERMINE that these costs, the charges of £250 and the Tribunal fee of £250, were reasonably incurred.

10% Works - £778.52

123 The Respondents' explanation at B2 T10(c) states that an additional management fee is charged when major works are carried out. These will usually involve works which "exceed £1,000 or more [sic]". The charge covers the section 20 consultation procedures where necessary. During 2014, the total cost of the works came to £7785.25. 10% of that sum was £778.52 which is the amount included in the accounts (B1 T1c). The history is set out at B2 T10(e). The relevant invoices are at B1 T1b. Having been contacted by Blaenau Gwent Council, Management attempted to contact a number of contractors, but of the few who responded only Dawn Construction was able to

start work within a reasonable time frame bearing in mind the threat of a formal notice from the Council. During the course of the work the Council served a notice informing Management of the necessity to carry out additional work to the soffits and bargeboards which were considered dangerous. Dawn Construction was asked to do the work immediately as it was still on site.

124 Mrs Haines conceded that the 10% charge had not been notified to the lessees when the s20 notices were served. She explained that the charge was usually made when the cost of the works was £1,000 or more. Anything less than that was considered minor. The charge would be made where the consultation procedure had to be followed. It covered the cost of the letters to the lessees, notices, dealing with queries, obtaining quotations. Management also had a responsibility to Crown and to the lessees to see that the work was done properly. If the work had been inadequate, Management would have had to fund the cost of remedial work. She accepted that the cost of £530 for repair of a leaking gutter, £90 for guttering and £1582 for work to the bargeboards and soffits were additional to the main works (£5, 427). She also accepted that only £50 of the bill for £530 related to actual work done, the remainder being the cost of the scaffolding. She conceded that the works costing £90 and £530 were small works.

125 Mrs Haines felt that 10% was quite a low figure. If a surveyor had been appointed he/she would have charged 10%. In the circumstances, the project had been managed internally. She did not know if Dawn Construction had a surveyor or architect. Management had sent out the consultation notices. Mr Collier had responded but there had been nothing from the other lessees. Mr Haines had inspected the works from ground level. He dealt with the technical side of things rather than the practical side although he had worked in the construction industry and had built their own house.

126 Mr Collier objected to payment of the 10%. He had not been told about it. He accepted that some companies did add a percentage although he did not accept it as normal. He felt the lessees should have been given a copy of the terms. He pointed out that failure to notify the lessees in the "notice of the major works to take place" was actually in breach of Management's agreement with Crown. Further, Mr Haines only attended once. In his view the charge was unreasonable and had not been included in the estimate. Mr Forbes and Mr Evans also objected. Mr Forbes submitted that there was no provision for this in the lease. He could not see what Management did to charge 10%. He considered that they could have done what they actually did for a charge of 2½%.

DETERMINATION

127 Mr Collier was quite right that when he observed that the failure to inform the lessees that an additional charge was to be levied constituted a breach of the management agreement (clause 11.2 in the Property Management Agreement). However, it was not clear that this was being regarded as a justification for not paying the charge or merely an observation. If it had been in the agreement between the lessor and the lessee, it could well be argued that it should have a bearing on our decision. The Property Management Agreement was intended to regulate the relationship between Crown and Management and in particular to ensure that any claims against or shortfalls on the part of Management (whether Management's fault or not) could not be recouped from Crown. It was never intended to set up a condition precedent to the payment of service charges so that the failure to give such notification would preclude Management and Crown from collecting the cost of the works. Furthermore, the statutory requirement relates to the cost the works, not the cost of management. In any event, the Respondents applied for dispensation. Any defect in the statutory process has been cured by that dispensation.

128 Some leases permit a lessor to charge a percentage of the cost of works as a charge for managing the works, particularly when the development is self -managed. Nonetheless, no matter how it is described or calculated, the over-riding principle is that such charges must be reasonably incurred. This will depend upon a variety of factors which will be drawn from the particular facts of the case. The starting point will frequently, though not necessarily, be the general cost of management and what that cost was intended or (where the issue has been the subject of a Tribunal determination) determined to cover. The lower the general management fee, the more likely it is that the manager will seek to charge an extra amount where substantial building or repair works are involved. At the level of fees charged by Management (£1,500), we can well understand that major works will attract a supplemental management charge. In support of that proposition, we need only look at the Countrywide "Scope of Works" where at section 13.12 there is included "any major works involved with costs of greater than £1,000 will attract an administration fee of 10%" (B3 T3).

129 The issue for us is whether the costs were reasonably incurred. In particular, does the work done merit the charge claimed? The Respondents point out that they started the consultation process. The Applicants say that the Respondents abandoned it in favour of the s20ZA application for which they were charged (and we have allowed) £250 plus the fee of £250. The Respondents say they had to look for contractors and obtain estimates. The Applicants point out that the Council had in effect told the Respondents what needed doing. The Respondents say that they were responsible for inspecting the work and ensuring that it was done properly.

130 We accept the evidence that it is common practice for managing agents to charge an additional fee for organising and supervising major works. Smaller works, certainly less than £1,000 are generally matters of routine maintenance encompassed in the annual management charge. Sometimes a general maintenance issue may cost more than £1,000, but will not involve anything beyond the routine obtaining of quotations, accepting the lowest or otherwise most beneficial quotation and inspecting the work afterwards. Mrs Haines accepted that the invoices for £90 and £530 were really minor works. In the latter case, although the overall bill was £530, the cost of the repair was only £50. The majority of the bill was for the scaffolding. The same applied to the invoice for £1,582.25 from Dawn Construction dated 25th October 2014(B1 T1b). The scaffolding cost was £1,200. The actual work to the soffits and bargeboards came to £382.25. The work itself was identified by the Council. We are not satisfied on the evidence that any of these works would have required any significant management time over and above what would normally have been anticipated when agreeing a fee of the order of £1,500 for a property of this nature.

131 On the other hand, the main works which were the subject of the s20ZA application were significant and we would have expected a manager to raise an additional charge for dealing with the various notices, queries, planning, quotations and supervision. A fee in the order of 10% is not out of the ordinary in such circumstances. It will depend on what work the managing agent actually carried out. In this case, the requirements were dictated by the local authority. The Council had identified what needed doing, the tender process was foreshortened by reason of the s20ZA application and the lack of tenderers, supervision was minimal and the work had to be done to the Council's satisfaction irrespective of Management's opinion. The wording of Mr Haines' letter of the 6th November 2014 (B2 T10(e)) does not suggest to us that he had inspected the work. He is inviting the Council to do so saying 'we will be planning a site visit ourselves within the next few weeks'. We know from Mr Girijan and Mr Haines that the site visit occurred in January 2015. Mr Collier said that Mr Haines had only visited once during the course of the work. Mr Haines said he had visited on 2 or 3 occasions in late 2014 and early 2015. We find it hard to believe that a manager with responsibility for some major work at a property where there are many unhappy tenants and where the Council has threatened one notice and issued another did not keep a record of his visits. Accepting that one of the visits was in January 2015, on Mr Haines' own evidence this leaves only

one or two visits in late 2014. A responsible manager would have carried out a regular inspection of the Property as part of the general management. We do not see that the additional work justifies a 10% fee. On the other hand the figure of 2½% put forward by Mr Forbes, Mr Evans and Mr Girijan is on the low side. In our judgement we consider that the appropriate figure is 5% of the main contract. We are not satisfied that the work involved in the other jobs carried out by Dawn Construction merits any additional charge. We therefore DETERMINE that the sum of £778.52 was not reasonably incurred. The amount reasonably incurred will be determined after consideration of the Dawn Construction invoice below.

Legal Fees Hatch Brenner - £600

132 The accounts (B1 T1c) give the figure of £600. The copy invoices (B1 T1b) indicate a letter from Hatch Brenner which reads: "We acknowledge receipt of the sum of £610 [sic] received on the 1st December 2014 in respect of a potential court fee relating to Manchester House." (£610 was the Court issue fee for claims in excess of £15,000 but less than £50,000.) The narrative prepared by the Respondents at B2 T10(c), merely refers to two letters, 28th October 2014 and 5th February 2015. There is also included an invoice dated the 27th January 2015 billing for work done between 22nd September 2014 and 23rd January 2015 "for advice and assistance in relation to recovery of service charges in respect of Manchester House and 9 Gloucester Street" . The total of the bill is £2623.50 plus VAT and a disbursement of £3 for a Land Registry office copy of a leasehold title. The Respondents say that the figure of £600 was a proportion of that. The letter of the 28th October 2014 is the opening letter to the client dealing with terms of business and money laundering and relates to Mr Watts' (to whom the letter is addressed) instructions to try and recover six outstanding service charge bills in relation to Manchester House". Mr Manley, no doubt on instructions, whilst conceding that late payment charges were not recoverable, explained that the Respondents were faced with implacable lessees and therefore it was reasonable to engage Hatch Brenner to take advice on how to manage the situation. Section 21A(4) (dealing with the withholding of service charges) is technical and it was reasonable to take advice because many flats were unoccupied. The Respondents needed to ascertain the legal standing of the parties concerned. The sum of £600 would not take matters very far.

133 Mr Collier argued that Hatch Brenner, as a professional organisation should not have charged for 2 properties on the one bill. He could not see how the invoice on 2 properties was to be paid - by which we took him to mean apportioned between the individual lessees of the different properties. When put to him that it was preliminary advice on forfeiture and recovery, Mr Collier did not consider that Mr Watts needed to take advice on recovery or forfeiture.

DETERMINATION

134 In our directions of the 24th June, we required the Respondents to provide details of the work done. From the letter of the 28th October 2014, it would appear that Mr Watts attended a meeting with Mr Cushing at Hatch Brenner and instructed him to try to recover outstanding service charge bills following which Mr Cushing sent letters to the lessees. Interestingly, the letter informs Mr Watts that "it should be possible to pursue any outstanding service charges against current lessees if they were not cleared when they purchased the flat". The Respondents acknowledge that this is not correct. There is also a reference to a question mark over the ownership of flat 9 but it is clear that it is Mr Watts who is going to find out. The letter says that "you do now [sic] have details of the new occupant". ("Now" could in the context be a misspelling of "not".) What is clear is that the £600 appearing in the accounts was a sum requested on account of costs in the letter of the 28th October 2014. Whether that was paid or whether it was regarded as accrued by the accountant is not clear. We are not satisfied that the payment was the court fee of £610 received on the 1st

December 2014. It is a different amount. It is a precise amount and is stated as relating to a "court fee" (singular) which would coincide with the amount of a claim in excess of £15,000.

135 We do not accept Mr Manley's explanation. The correspondence clearly shows that the purpose of the meeting was to instigate a process for recovering the outstanding service charges, essentially, taking instructions and writing the letters before action. We accept Mr Collier's point that Mr Watts knew, or rather thought he knew, what he was doing. He was, as the letter indicates, instructing his solicitors to try and recover the service charges.

136 Of course, as it happens, the Respondents were not entitled to recover the charges as they were not payable. On their own admission, the Respondents had not served the correct summary of tenants' rights and obligations. What is more, again on their own admission, they had not at that time taken an assignment of the debts owed to Regis, even if Countrywide had served the correct summary - which we have found they did not. At the time that the Respondents consulted Hatch Brenner in October 2014, they were not entitled to start proceedings for recovery of service charges as they were not at that date payable. It is not reasonable to charge lessees for Solicitors' costs in attempting to recover money which was not payable. We therefore DETERMINE that these costs were not reasonably incurred.

137 We should add that no explanation was given as to why the £600 was not being charged against the defaulting lessees as opposed to being included in the service charge account although we have noted that there are entries for "11/02/15 Legal Action Preparation - £200" posted on Mr Walker's statement dated 23rd March 2015 (B1 T1) and two similar postings dated the 19th November 2014 posted on each of Mr Forbes' statements. These entries were accepted by the Respondents as not payable.

Electricity SWALEC - £117.88
Cleaning & Environmental Metro-Rod Water Jetting- £156

138 The Applicants did not raise any issues relating to these items. We therefore DETERMINE that these costs were reasonably incurred.

Repairs and Maintenance - Dawn Construction - £5,427.00
Dawn Construction - £1,582.25
Dawn Construction - £90.00
Dawn Construction - £530.00

139 There was a general acceptance that the amounts charged by Dawn Construction were reasonable. The Applicants' criticisms which were voiced by Mr Collier generally fell into the following categories:

- the Respondents should have organised the work much earlier instead of waiting for the Council to take action. The Respondents' failure to act in timely fashion meant that there was no opportunity to test the market. Consequently the lessees were required to pay more than was reasonably necessary.
- the Respondents should have recovered the cost from Mr Neild as the flooding came from his flat.
- it was unnecessary to arrange for scaffolding to be extended around the building. The use of a cherry picker at a cost of £100, would have reduced the overall cost.
- the front doors of each flat belonged to the relevant flat owner and therefore the cost of replacing them as required by the Council should have been borne by the relevant leaseholder not by all the lessees.

- the Respondents did not argue with the Council to reduce their requirements - eg doors may not have needed replacing.
- some of the work amounted to a renewal when a repair would have sufficed eg in respect of the cracked and disconnected downpipe.

140 Mr Girijan accepted the costs although he considered that it should have been possible to have the work done more cheaply. If he had been told that it was necessary to change his door, he would have done it himself at a lower cost than that charged by Dawn Construction. He had to shave off a little from the edge of the door to make it fit. Mr Evans thought that the doors may need to be changed again.

141 Much of the Respondent's questioning of Mr Collier centred on the fact that he had provided a schedule of work that was needed at the Property and in February 2014 had submitted an estimate to do the work. He had been given estimates from two alternative companies. One of these was JY Property in Kent which regularly did work for Management at other developments. The other was from Provincial Services Ltd the director of which was Mr Watts. Both estimates were submitted in December 2013. Mr Collier believed that Mr Yarlett of J Y Properties had not visited the Property, although Mr Haines thought he had visited on one occasion. Mr Collier said that he became suspicious of the tender process, thought he would not be paid and would not have accepted the contract if it had been offered. As it happened he had not been awarded the contract. He had been asked by Mrs Haines to produce a certificate of insurance but he had failed to do so. No contract was awarded until the Council stepped in.

DETERMINATION

142 Despite Mr Collier's combative approach and his use of intemperate language, there are some valid points. Mr Manley skilfully exposed Mr Collier's flaws, but that does not mean we should ignore the points he has made. For example, he has every right to question the two estimates when one is provided by a contractor in Kent and the other is by a company whose sole director is also a director of Management. It is also true that if Management had followed up the repair programme it would have given more time to canvass other contractors in the hope of achieving a lower price. It may have been possible to negotiate with the Council about the extent of the work required to be carried out. It might also have been possible to organise a cherry picker instead of paying for scaffolding. We are not convinced on this point and we think that a cost of £100 as proposed by Mr Collier is somewhat optimistic. However, whilst we have some sympathy with his argument, we have to decide the issues on evidence and without evidence of the sort of savings that could have been made, eg alternative quotations or even oral evidence by an independent contractor or an expert, we cannot go along with Mr Collier's argument. Mr Girijan believes that the job could have been done at a lesser cost, but he is realistic in his approach and accepts that on balance it is difficult to argue that the charge is unreasonable. It may not have been the cheapest available if more contractors could have been found to quote, but the cost was within that broad range of reasonableness.

143 The issue of whether the replacement of a section of downpipe as opposed to effecting a repair is essentially a matter of judgment. The lease (B3 T7 at p15) permits "renewing and replacing all worn or damaged parts" of the Maintained Property (as defined) which includes the pipes and gutters. We do not know the condition of the relevant downpipe, the cost of repair if repair were possible, its useful life if repaired or the cost of replacement. Mr Collier accepted that work of some sort was required. The invoices refer to "repair" which may be a generic term for works of repair and, where required, replacement. Without at least some clarity and evidence suggesting the contrary, we accept the Respondents' argument that was done was appropriate

144 The issue of Mr Neild is a difficult one. Undoubtedly, the water damage came from a leak in his flat. That does not necessarily mean that he is liable either to the lessor or the other lessees unless he was in breach of the lease or in some way negligent. He may well have failed to "comply in all respects with the reasonable requirement of the insurers…" (B3 T7 at p22). However, if no-one told him what those requirements were (and Mr Forbes' evidence suggests that lessees were not told) to what extent is he culpable? We can appreciate that from Mr Walker's point of view, he was unaffected by the flood. It was not his fault. He should not therefore be required to contribute. The lessors (Regis and Crown) are able to recover the cost of repairs from the person responsible. They have the ultimate sanction. They can forfeit the lease. They will own the flat free of lessee's mortgage. They can recoup all their expenses. Mr Manley rightly argued that the lessees would not be too pleased at having to pay the costs of attempting recovery of service charges from Mr Neild, but that does not answer Mr Collier's point that ultimately the flat will belong to the lessor. The insurance losses occurred prior to Crown's ownership and possibly prior to Regis' ownership too. Mr Forbes may also have a claim directly against Mr Neild for breach of the covenant "not to permit any liquid to soak through the floor…" but in the light of the evidence of Mr Neild's financial circumstances, that will provide little comfort. Mr Collier's point is an interesting one and is not without its merit, but legal action against Mr Neild will not be straightforward and in Mr Forbes' case is unlikely to prove worthwhile. We can well understand why the lessors and Mr Forbes would be reluctant to embark upon such a course of action.

145 One issue which we consider Mr Collier to be right about is the question as to whether the cost of replacing the fire doors at the entrance to the flats should be the responsibility for the lessees as service charge payers or whether the cost should be passed on to the individual lessees whose flats were affected. The problem is that the informal notice was served on Crown as lessor. The specification of works dated the 4th August 2014 included at paragraph 4 (B2 T10(e)) a requirement to replace the doors to flats 7 - 10 with FD30S fire doors with smoke seals and intumescent strips as the existing doors were "aged, rotten and defective".

146 It was common ground that the definition of "Flat" in the First Schedule of the Lease included: "The entrance door of the Flat and the frame of any such door" (B3 T7 at p11). The lessee's obligation as set out in paragraph 21 of the Seventh Schedule Part 1 (B3 T7 at p22) is to "comply in all respects at the Lessee's own cost with the provisions of any order direction or requirement made or given by any competent authority pursuant to any statute requiring any alteration modification or other work on or to the Demised Premises", ie the flat. The lease does not limit this to a requirement served on the lessee. The Council's requirement for the entrance doors of the flats to be changed was therefore the responsibility of each relevant lessee to carry out. The complementary clause is paragraph 13 of the Fifth Schedule (B3 T7 at p17) where the lessor is entitled to charge lessees for the cost of "complying with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations orders byelaws made thereunder relating to the Estate save insofar as such compliance is the responsibility of any individual lessee" (our underlining). Entrance doors to the flats and the associated door frames are therefore the responsibility of each lessor and the job of replacing these doors should have been passed on to the individual lessees with the sanction that non-compliance with the Council's requirement would constitute a breach of covenant.

147 It follows that the item in Dawn Construction's account "take out 4 x fire doors incl frames and architrave, replace with new…£966.00" is not a service charge item and we DETERMINE that this cost was NOT reasonably incurred and that £6663.25 was reasonably incurred. It is up to the Respondents to consider if and how they seek to recover the cost from the lessees of flats 7-10. We should perhaps mention that we have taken the word "frame" in the lease to mean any associated

woodwork surrounding the entrance to the flat including any architrave as there is no mention of architrave in either the lessor's or lessee's obligations whereas the invoice from Dawn Construction refers to both "frame" and "architrave". The point was not raised during the discussion of the issue. It follows from our determination that the 5% management fee is based on a £4461 and not £5427, namely £223.05.

Insurance - Fox Insurance Services - £1,623

148 The issues with regard to the insurance have been fully explored previously and for the reasons which we have set out in paragraph 97 are equally applicable here. We therefore DETERMINE that these costs were reasonably incurred.

Insurance handling charge - £150

149 In their Statement dated 22nd July 2015 (B3 T1), the Respondents indicated that it would credit the insurance handling charge for 2014. Accordingly we DETERMINE that this charge was NOT reasonably incurred.

SUMMARY

150 The amounts claimed were:

Management fee	£1,500.00	
Accounting fees	£300.00	
Preparation for hearing	£250.00	
Administration	£1,457.50	
10% works	£778.52	
Legal fees	£600.00	
Application fee	£250.00	
Electricity	£117.88	
Metro-Rod	£156.00	
Fabric Repairs etc	£7,629.25	
Insurance	£1,623.00	
Insurance handling	£150.00	
TOTAL	£14,812.15	£14,812.15

We have determined that the following costs were reasonably incurred:

Management fee	£1,500.00	
Accounting fees	£300.00	
Preparation for hearing	£250.00	
Administration	£ NIL	
10% works (now 5%)	£223.05	
Legal fees	£ NIL	
Application fee	£250.00	
Electricity	£117.88	
Metro-Rod	£156.00	
Fabric Repairs etc	£6,663.25	
Insurance	£1,623.00	
Insurance handling	£ NIL	
TOTAL	£11.131.48	£11,083.18

Amount to be credited £3,728.97

151 WE DETERMINE that the Applicants are entitled credits in respect of each of the flats they own in the sum of £372.90.

THE 2015 PAYMENTS ON ACCOUNT

152 By the time this Decision is issued to the parties, the 2015 Accounts will no doubt have been prepared and to a certain extent this part of the Decision is academic. We were provided with a document setting out the estimated service charges for the year ending 31st December 2015 totalling £11,000. The Respondents produced a set of management accounts for the half year to 30th June 2015 showing expenditure of £2,654.84. This will be a little unbalanced as the insurance premium estimated to be £1,700, is payable in October. In determining the on account sum payable, we are not determining that particular expenses have or have not been reasonably incurred. Our role is to determine a reasonable amount payable.

153 Mr Girijan and Mr Evans did not comment on the breakdown of the estimated costs but instead indicated what they thought was a reasonable monthly payment. Mr Evans suggested £50 to £60 per month. Mr Girijan suggested £50 to £55 per month. The Respondents' figure is £91.67 per month. Mr Collier gave us his own figures. We set them out below:

Item	Respondents	Mr Collier
Insurance	£1,700	£1,700
Windows, drains etc	£500	£100
Internal cleaning	£600	NIL
Electricity	£300	£300
Garden etc	£200	NIL
External repairs	£500	£200
Internal repairs	£500	NIL
Floor coverings	£1,500	£750
Sinking fund	£1,500	£1,500
Health and Safety	£400	£200
Management and admin	£2,500	£2,400
Accountancy	£300	£300
Insurance handling	£100	NIL
Professional, legal	£400	£400
TOTAL	£11,000	£7,850
MONTHLY	£91.67 pm	£65.46 pm

154 The Respondents are obviously anxious to have as much of the funding for their anticipated expenditure in place before they incur it. This is common practice and is not in itself unreasonable. However, it was clear from the evidence of what had been expended and the general reluctance on the part of the Respondents to commit themselves to expenditure - even when, in the case of the carpet, they had indicated to the Tribunal that they would purchase one - that the level of expenditure as budgeted would not be achieved in 2015. That being the case, albeit with the benefit of a certain amount of hindsight, it would seem to us unreasonable to demand on account funds which are never going to be spent except where provision is made for a sinking fund - as here.

155 Mr Girijan's principle cause of complaint was the high cost of management and administration. Questioned by Mr Manley, he considered that £55 pm would cover most costs. He accepted that it was necessary to cover all costs and any surplus would be available for future spending. If the Respondents were doing the job for him, he would be happy to pay £90 pm. Mr Forbes pointed out that rents of the flats were generally in the region of £375 pm. Mr Evans explained that Housing Benefit was only £55 per week.

DETERMINATION

156 It is understandable that lessees should consider that service charges should in some way be proportionate to the rental values of the flats. Lessees who let their flats are responsible for the service charges and if a lessee has to fund a mortgage as well as service charges out of the rent, a sudden increase in the service charge can turn what was a slightly profitable venture into a loss making one. This can lead to forced sales and lower property values with, in some cases, lessors and others buying up flats at substantially reduced prices. We are not suggesting that that is the case here. However, it is easy to see how an attitude of single-minded enforcement, failure to maintain and lack of co-operation can foster a climate of suspicion which is not easy to dispel. The point Mr Girijan and the other lessees are making is that there must be some proportionality when it comes to setting service charges. The high cost bases of the South East of England and even Cardiff city centre are not appropriate to small valley communities. If the ground rent and service charges equate to approximately one third of the rent, by the time any internal insurances and maintenance costs are taken into account together with an allowance for voids, it is easy to see why the lessees are unhappy with a service charge level of over £90 per month. However, the cost of management and services are to a large extent governed by market forces and will relate to the nature and quality of the management and services provided. Certain costs cannot be controlled. Insurance, for example, is always going to be a major cost, particularly if there is a claims history. Repairs depend not only upon location, but on the nature of the building. In this case it is an old but tall building next to a river. Certain repairs are going to be more expensive than for a modern purpose built block of ten flats. These are bound to be reflected in the budgets.

157 The Respondents are right that the costs must be covered. But the skill of the manager is to ensure that a reasonable level of service is provided at a reasonable cost. In this case, Management is only providing a basic service. There is no hierarchy to support. There are no area managers visiting the property monthly - in some cases managers visit more frequently - checking the property, speaking to the residents, monitoring the state of the common parts. There is very little to do in the way of gardening, cleaning, window cleaning and of course it has not been done. On the other hand it would have been reasonable to insert some figure should it be considered necessary or desirable to carry out such tasks.

158 We are satisfied that the insurance provision is reasonable. The provision for windows drains and guttering at £500 is probably a little on the high side. We can see no justification for Mr Collier's suggestion of £100. In our view a provision of £300 should suffice. In reality, there was no cost relating to this in the first 6 months of the year. As far as cleaning the common parts is concerned, there was no evidence that this has been done in the past and in our view it is unlikely that it will be carried out in 2015 bearing in mind the condition of the small lobby for flats 3 and 4 and the work required to flats 8 and 10. We agree with Mr Collier that It is not reasonable to include anything for this. Mr Collier had no issue with the electricity estimate of £300. He did not accept the figure of £200 for gardening and external maintenance. This was really on the basis that no gardening had been done in the past and he had offered to do the job. He had even asked if Crown would annex the land to Mr Walker's lease as the area benefitted no-one else. We must point out

that there is an invoice already in B2 T10(h) for fencing at a cost of £280. We accept the Respondent's figure. As far as external and internal works are concerned, the Respondents have estimated £500 for each of these. Mr Collier has suggested that the estimate for the external work should be adjusted to £200 with nothing for internal work. In our view, Mr Collier is being unrealistic. Already expenses have been incurred and we do not consider the estimate from the Respondents for the external work to be unreasonable. The estimate for internal work is probably a little on the high side. In our view a figure of £300 would be reasonable.

159 As mentioned above Mr Watts indicated at the hearing that he would arrange for a carpet to be put on the stairs up to flats 9 and 10. It was not done. There seems to us to be little purpose in including the cost of something which you have no intention of doing - or if you only intend to do it in circumstances which are unlikely to be fulfilled in the near future. We are inclined to agree with Mr Collier's estimate of £750, but in the circumstances we do not think it reasonable to include any cost for this item. Mr Collier did agree that a sinking fund payment of £1,500 was reasonable. However, we accept Mr Girijan's concerns and we are inclined to the view that to impose such a charge would push the on account service charge beyond the level of reasonableness. It is important for the Respondents to build up the Applicants' confidence in their ability to respond to their concerns. The sinking fund should have been built up over the past years, but it has not. We believe a more reasonable approach is to include a figure of £500 in the 2015 estimates and gradually build it up to a sensible level, increasing the amount in years when expenses drop and using some of it when the service charges are anticipated to be high. The Respondents have included an estimate of £400 for health and safety assessments. Mr Collier has suggested a figure of £200. At B2 T10(h) there is already an invoice for an asbestos survey of £360. We consider Mr Collier's figure to be too low. We accept the Respondents' figure of £400 to be reasonable.

160 The management fees are split into three parts: the management fee (£2000), the administration charge (£500) and the insurance handling charge (£100). The total comes to £2,600. Mr Collier was prepared to accept a total of £2,400. Mr Girijan considered the charges too high. We have already explained above our reasons for determining that the totality of these charges for 2013 and 2014 are not reasonable. The Respondents' own evidence was that managing agents locally would charge between £2,000 and £2500, although, as we have already commented, we find the lower figure more appropriate . Those figures would be for the whole job. There was no suggestion in the evidence that there would be extra charges for sending letters and so on. Again as we have said above, the actual management of the Property should be straight forward. It is the relationship between the management and the lessees that makes this difficult and high management charges and the poor quality of the service are two of the reasons for the difficulty. For example, Management conceded that it had failed to serve the correct notices with the service charge demands. In B2 T10(h) there is a list of administration charges. The last entry is a charge of £125 for "letters informing of re-invoicing with Welsh summary of obligations". Management is in effect asking the lessees to pay for Management's own mistake. Other charges are for letters informing the lessees of proposed inspection dates. This is surely part of the general management. If it was to do with inspecting the major works, then it was included in the 10% charged in the 2014 accounts (reduced in this decision). In our view a reasonable estimate for fees for managing the Property is £2,000. We are not suggesting that the figure will be regarded as reasonably incurred should the 2015 accounts be challenged, but we are satisfied that it is reasonable to include that as an estimated charge. There appeared to be no issue regarding the inclusion of accountancy fees of £300 and professional fees of £400 and accordingly we accept them as reasonable.

161 We summarise our determination as follows:

Item	Respondents	Determination
Insurance	£1,700	£1,700
Windows, drains etc	£500	£300
Internal cleaning	£600	NIL
Electricity	£300	£300
Garden etc	£200	£200
External repairs	£500	£500
Internal repairs	£500	£300
Floor coverings	£1,500	NIL
Sinking fund	£1,500	£500
Health and Safety	£400	£400
Management and admin	£2,500	£2,000
Accountancy	£300	£300
Insurance handling	£100	NIL
Professional, legal	£400	£400
TOTAL	£11,000	£6,900
MONTHLY	£91.67 pm	£57.50 pm

162 We DETERMINE that a reasonable amount payable on account of the 2015 service charge is £690 per flat (£57.50 pcm).

LANDLORD AND TENANT ACT 1987 (the 1987 Act)

163 Some of the Applicants have raised an issue concerning the Respondents' requirement for the lessees to pay their service charges together with their ground rents into the same account. The issue is covered by section 42 and 42A of the 1987 Act. Briefly the requirement is for the service charges to be held in a trust account or a client account as it is sometimes called. Mr Collier is concerned that the service charges are paid into the same account as the ground rent. Mrs Haines stated that the money held in that account is in fact held on trust. We note from the first statement for Mr Walker in B1 T1(a) the name of the account is shown as Crown Management UK Ltd (Client Account). The subsequent, larger print, invoices where payment details are shown simply refer to Crown Management UK.

164 There is no statutory obligation for the manager to create a separate bank account for each property unless there is a specific requirement in the lease to do so provided that the amounts are clearly identifiable. It may be prudent sometimes to have a separate account if only for reasons of transparency and for the ease of calculating interest. It must also be appreciated that Crown is a client of Management and money paid to Management for Crown is likewise client money and must be held in the client account until it is either forwarded to Crown or billed in accordance with the management agreement.

165 On the basis of the evidence before us, there is nothing to suggest that Management has been treating the service charge payments improperly. We agree that it is not usual for ground rent and service charge monies to be mixed and in the interests of transparency it might be perceived in a better light if ground rent and service charges were kept separately. Lessees have the right under the 1987 Act to verify the information. There is a procedure laid down in the 1987 Act. We do not

consider on the basis of the information provided that Mr Collier has made out a case that he is entitles to withhold payment.

COSTS

166 The Applicants have made an application asking, in effect, that we make an order preventing the Respondents from charging the Applicants their costs of this application. We have become aware that Respondents' costs may amount to many thousands of pounds totalling substantially more than the service charges in dispute. We believe that it is pertinent at this stage to make some general comments.

(a) The purpose of the legislation is to protect residential lessees from being charged unreasonable amounts for services and administrative tasks carried out by lessors under the terms of their leases.

(b) Unreasonably high costs, poor quality management and inferior services impact not only upon the values of the lessees' interests in their properties but can and frequently do significantly affect the lessees' enjoyment of their homes causing distress and financial worries.

(c) Court proceedings are often technically complex and expensive. Legal aid is no longer available to assist those with modest means. Tribunals are promoted as being informal and user friendly. Lessors and lessees should feel able to make or respond to applications without the worry of substantial legal costs. The ability of Tribunals to award the costs of one party to be paid by the other party is restricted both in the amount that can be awarded and the circumstances in which they can be made payable.

(d) Parliament has therefore deliberately and clearly expressed its intention that as a rule costs are to be borne by the party incurring them so that the risk of paying the other party's legal costs should not weigh in the minds of any party when deciding to make or respond to an application.

(e) Many service charge and administration charge applications involve relatively small amounts. Sometimes the issues amount to little more than clarification as to why certain items of expenditure are incurred. Occasionally, particular service costs are on the high side, but are held to be within the bounds of reasonableness. At times the dispute concerns the frequency or even the necessity of a particular service. Often our decisions are regarded as guidance for dealing with management issues in the future. The fear of having to pay the other side's legal costs should not inhibit either a lessor or a lessee from bringing genuine differences to this Tribunal (provided of course they are within the Tribunal's jurisdiction). If such differences are not resolved by agreement or by the Tribunal they fester, parties become resentful and the property becomes difficult to manage.

(f) Many leases include a clause or paragraph in which the lessee covenants to pay the lessor's costs. The terms of such clauses vary from lease to lease. There is usually a direct covenant to pay costs preparatory to forfeiture. These costs may include the costs of an application to a Tribunal for a determination of the amount of service charge payable. These are direct obligations to pay. In many leases, the lessor's costs of enforcing or attempting to enforce breaches of covenant by other lessees are included as service costs payable through the service charge. Further, there are leases which state that service costs include the cost of taking or responding to any tribunal applications. The terms of the lease are therefore critical.

(g) The fact that a lease may permit a lessor to charge its costs against the lessees through the service charge does not mean that they have free rein to clock up bills of many thousands of pounds to the extent that even a small victory on the part of a lessee will result in a heavy loss. The Tribunal has to consider whether a reasonably prudent lessor would spend that sort of money if it considered that it was going to have to pay its own costs (see Plough

Investments Ltd v Manchester City Council [1989] 1 EGLR 244). Tribunals must therefore be careful when considering the issue of costs that they do not deprive a successful lessee of his/her hard won gain by permitting a lessor to recoup its costs.

167 The first matter to consider is whether the lease permits the recovery of costs of responding to the application. We specifically invited Mr Manley to consider this point and we are grateful to him for his detailed written submissions. He makes the following points:

(a) Little assistance can be derived from other cases as the wording of clauses is unlikely to be identical.

(b) Crown (as lessor) is entitled under paragraph 16 of the Fifth Schedule to recover moneys actually expended on "enforcing or attempting to enforce the observance of the covenants on the part of any of the owners or occupiers or [sic] any part of the Estate". There is clear and unambiguous wording that the costs are enforceable against all lessees not just the defaulting lessee. (see Sella House Ltd -v- Mears [1989] 1 EGLR 65).

(c) Paragraph 18 of the Fifth Schedule permits the employment of staff and/or engaging other contractors and entering into such contracts for maintenance of any part of the Maintained Property.

(d) In the Seventh Schedule, each of the lessees covenants to

- 2 "promptly pay and discharge all rates, taxes, Council Tax and other outgoings of any kind and whether or not of a novel nature which …shall be assessed on charged on or payable in respect of the Demised premises or any part thereof"

- 3 "keep the Lessor indemnified in respect of all outgoings payable in respect of the Demised Premises payable by the Lessee pursuant to the covenant in paragraph 2 above and if the Lessor shall from time to time during the Term be called upon to pay such sums to repay the same to the Lessor on demand"

- 4 "To pay all costs charges and expenses (including legal costs and surveyors fees) incurred by the Lessor as a result of or in connection with any breach of the Lessee's covenants herein contained including but without prejudice to the generality of the foregoing any such incurred in or in contemplation of any proceedings".

(e) In the Particulars on page 4 of the Lease, the Maintenance contribution is defined as 1/10th of the Maintenance Expenses which at the head of the Fifth Schedule are described as "moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor at all times during the Term in respect of" the matters set out in the Fifth Schedule.

168 When inviting Mr Manley to deal with the issue of costs, we suggested he might wish to consider a number of cases:

Sella House Ltd -v- Mears [1989] 1 EGLR 65 (Sella)

The relevant part of the clauses relied upon were: "To employ at the Third Company's discretion a firm of Managing Agents and Chartered Accountants to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof"; and "To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building". The Landlord argued that the terms were wide enough to allow for recovery of the costs of suing other tenants through the service charge. However Taylor LJ made the oft quoted comment that "for my part I should require to see a clause in clear and unambiguous terms before being persuaded that that result was intended by the parties." The Court of Appeal held that the terms of the lease did not cover legal costs in the service charge.

Greening -v- Castlenau Mansions Ltd [2011] (President George Bartlett QC)
The President followed Sella as similar wording was employed. Mr Manley comments that the wording is different in the present case.

Plantation Wharf Management Co Ltd -v- Jackson & anor [2011] UKUT 488 (HHJ Mole QC)
The terms were summarised as follows: the service charge includes "the fees charges…and expenses…of professional advisers" engaged in "the enforcement…of any covenants…relating to any unit…in the interests of good estate management". HHJ Mole QC held that the enforcement of covenants against a tenant was "in the interests of good estate management" and therefore these words were "clear and unambiguous" entitling the lessor to recover the legal costs of such enforcement through the service charge.

Twenty Two Clifton Gardens Ltd -v- Thayer Investments SA [2012] UKUT 71 (HHJ Walden-Smith)
The lease contained the following provisions:

> 10. The Company shall of its own volition or if requested by the Lessee take all reasonable steps to enforce the observance and performance by the Lessee of other flats in the block of the covenants and conditions in the leases of the other flats which fall to be observed and performed by the Lessee.
> 11. The Company may provide such other services as it shall in its reasonable discretion deem necessary for the better use and enjoyment of the Property by the Lessee and other occupiers of the Building.

HHJ Walden-Smith concluded that paragraph 10 related to instances where the lessor brought actions against other lessees and, following the decision of the Court of Appeal in St Marys Mansions Ltd v Limegate Investments Co Ltd [2002] EWCA Civ 1491, that paragraph 11 was widely drawn and that services for the better use and enjoyment related to services of a physical nature not a legal nature. As Mr Manley points out, the draftsperson had ill-advisedly used a capital "L" to signify the lessee of other flats when the lessee of the subject lease was defined as "Lessee". However, in HHJ Walden-Smith's opinion the meaning was clear - a view with which we respectfully agree.

169 Mr Manley also referred us to:

Iperion Investments Corporation -v- Broadwalk House Residents Ltd [1995] 2 EGLR 47 (Iperion)
The term "the Landlord's costs" was defined as "all costs sums payments charges and expenses properly incurred by the Landlord…in the proper and reasonable management of in and about [Broadwalk House]". The items of expenditure set out in the relevant schedule were "not by way of definition". The Court of Appeal held that although the Landlord had lost on most issues the Judge at first instance had not said that the Landlord had acted improperly or unreasonably in the litigation and so the Court concluded that the litigation costs were included in the Landlord's costs as defined. It did, however, reject the Landlord's appeal against the s 20C direction.

Assethold Ltd -v- Mr N W Watts [2014] UKUT 0537 (LC) (Deputy President Martin Rodger QC)
The Deputy President held that an obligation "to do or cause to be done all works installations matters and things as in the reasonable discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Development" included legal costs in relation to a dispute concerning a party wall. At paragraph 58 he says: "I accept that, as a general principle of interpretation, if contracting parties intend that a payment obligation such as a service charge should cover a particular type of expenditure they will wish to make that clear. Unclear language should therefore be read as having a narrower rather than a

wider effect. Nonetheless, I do not think that principle should be pushed to the point where language which was clearly intended to encompass expenditure in a wide variety of situations which the parties have not explicitly catalogued should be so restrictively construed as to deprive it of any real effect. It seems to me to be wrong in principle to start from the proposition that, with certain types of expenditure, including the cost of legal services, unless specific words are employed no amount of general language will be sufficient to demonstrate an intention to include that expenditure within the scope of a service charge. Language may be clear even though it is not specific." In paragraph 59, he adds: "a general provision such as paragraph 6 is included in a lease precisely because the parties appreciate that they cannot anticipate all eventualities." The Deputy President also went on to say that a paragraph referring to "the proper fees and disbursements…of the Surveyor the Accountant and any other individual firm…" for surveying, accounting or management did not include legal fees.

170 Mr Manley's submission is dated the 26th January 2016. However, on the 17th December 2015, the Deputy President published his decision in Geyfords Ltd -v- Sullivan and others [2015] UKUT 0683 (Geyfords). In that decision, after reviewing Sella and a number of other cases, he concluded that the paragraph "all other expenses (if any) incurred by the Lessors or their managing agents in and about the maintenance and proper and convenient management and running of the Development" was "less clear than is to be expected if the cost of proceedings against defaulting leaseholders had been intended to be recovered" through the service charge (paragraph 41). The fact that the particular lease in Geyfords was granted in 1978 and so issues would have been dealt with by the County Court and not "before a statutory tribunal operating in a largely costs-free jurisdiction" (paragraph 45) was a "further reason for construing the language as insufficiently clear to extend to the cost of litigation between the parties themselves" does not detract from the reasoning in paragraph 41.

DETERMINATION

171 When we invited Mr Manley to consider the issue of costs, we directed his attention to the particular issue: "whether the costs of responding to the application" were recoverable through the service charge. His principle argument is the lessees have to pay the lessee's Maintenance Contribution which is each lessee's 1/10th proportion of the Maintenance Expenses which comprise "the moneys actually expended or reserved for periodical expenditure…upon the matters specified in the Fifth Schedule". The Fifth Schedule indicates that the Maintenance Expenses are "moneys actually expended or reserved for periodical expenditure…in respect of the following." Unlike Iperion, the list that follows is definitive not indicative. It sets out a series of tasks which the lessor or its managing agent may do for which the lessee is required to pay. If the Respondents are to recover costs through the service charge, those costs must be incurred by reason of their having performed (or their proposing to perform) one or more of those tasks.

172 The particular task to which Mr Manley refers is that in paragraph 16 of the Fifth Schedule and that part of the paragraph relating to the enforcement or attempt at enforcement of covenants by all lessees. We do not disagree that abortive costs reasonably incurred in bringing an action against a defaulting lessee would be recoverable through the service charge. We accept also that such costs can also include costs incurred in seeking a determination by a Tribunal of the amount actually payable by the defaulting lessee. However, that is not the case here. The Respondents have never in these proceedings been enforcing or attempting to enforce the observance of any covenants on the part of the Applicants. The Respondents did not start these proceedings and when Mr Walker made his application, none of the Applicants was liable to pay the Respondents anything. These proceedings were brought because the Applicants, as lessees, were unhappy about service costs and management issues and they wanted these costs and issues resolved by "a statutory

tribunal operating in a largely costs-free jurisdiction" as the Deputy President put it (see above). It may well be to the Respondents' advantage to have the service charges determined by this Tribunal to enable them to seek recovery or forfeiture in the future, but that was not the purpose of the Applicants' bringing these proceedings.

173 Section 27A of the Act was introduced by the Commonhold and Leasehold Reform Act 2002 in March 2004 (in Wales). Many draftsmen took the opportunity to introduce new clauses to cover applications before this Tribunal. No such clauses were included in the leases of the flats. By 2010 the work of Leasehold Valuation Tribunals was known to practitioners and, if the parties had wanted, the Lease could have incorporated that intention. Instead what was agreed and enshrined in the Lease was that the cost enforcement or attempted enforcement would be payable through the service charge. It is clear and unambiguous.

174 As Mr Manley rightly observes, comparing clauses in the subject lease with clauses in the leases of other properties or developments has only limited value. The importance is the wording of the lease. The principles of interpretation are the same as for any other document (see Arnold -v- Britton [2015] UKSC 36). He rightly does not seek to persuade us that responding to this application was generally managing and administering the Maintained Property (ie the structure, common parts and so on). He does, however, refer us to paragraph 18 of the Fifth Schedule which refers to the employment of staff and/or engagement of contractors and entering into contracts "for maintenance" of the Maintained Property. This clearly refers to the physical services not legal services. Similarly, he mentions paragraphs 2 and 3 of the Seventh Schedule which refer to the lessees paying and discharging "all rates, taxes, Council Tax and other outgoings of any kind and whether or not of a novel nature which now are or during the Term shall be assessed on charged on or payable in respect of the Demised Premises or any part thereof." Paragraph 3 requires the lessees to indemnify the lessor in the event of the latter being called upon to make a payment which should have been made by the lessee under paragraph 2. With respect to Mr Manley, these clauses are intended to cover statutory payments (see Sadd -v- Brown [2012] UKUT 438 (LC) (HHJ Alice Robinson) not the payment of costs of a Tribunal hearing. Such costs do not easily fit in with "rates, taxes, Council Tax" which are assessed on or charged on or payable in respect of the flats. The service charges are payable in respect of services provided by the lessor in respect of the common parts, not the Demised Premises.

175 Mr Manley also refers us to paragraph 4 of the Seventh Schedule where the lessee covenants "to pay all costs charges and expenses (**including legal costs** (Mr Manley's emphasis) and surveyors fees) incurred by the Lessor as a result or in connection with any breach of the Lessee's covenants herein contained…" This is, however, a direct covenant to pay by the defaulting lessee, and nothing to do with the service charge. The paragraph is in fact substantially longer than quoted by Mr Manley and is a very full comprehensive catalogue of the costs charges and expenses payable by the lessee. If anything it lends force to the view that paragraph 16 of the Fifth Schedule is a back-up in case, for example, the actual costs incurred are less than fixed costs or awarded costs. It may be reasonable that forfeiture is attempted, but relief granted or the action settled on terms which do not cover the lessor's full costs. It may be possible under paragraph 16 to recover those costs as part of the service charge. However, that is a totally different set of issues from those which we have been asked to determine. The application before us was not an attempt at enforcement of the lessees' covenants. It was in fact the opposite. It was an application calling the lessor to account. We accept that not every situation can be foreseen over the course of a 999 year lease, but when the lease was granted, the "largely costs-free jurisdiction" of the Leasehold Valuation Tribunal was known and the parties made no reference to it or to the circumstances in which its jurisdiction could be invoked. It could have done so, as other lessors and lessees in other leases have done, but these

particular lessors and lessees did not. In the circumstances, we DETERMINE that the Respondents' costs are not recoverable as part of the service charge.

SECTION 20C OF THE ACT

176 In case we are held to be incorrect in our interpretation of the Lease, we will now proceed to consider whether to order that the Respondents' costs incurred in these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees. Under s 20C(3), we "may make such order on the application as [we] consider just and equitable in the circumstances". We have, therefore, a discretion, but as in all cases, we must exercise that discretion judicially and having regard to all relevant matters. This will include "the conduct and circumstances of all the parties" (per HH Judge Rich QC in The Tenants of Langford Court (Sherbani) –v- Doren (LRX/37/2000)). Judge Rich continues that we should keep in mind "that the power to make an order under section 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that make its use unjust". Where it is included in the lease, the entitlement to costs is "a property right". We should not lightly deprive the Respondents of such a right (see also HH Judge Mole in Plantation Wharf Management Co Ltd –v- Jackson and Irving [2011] UKUT 288 (LC)). The Deputy President makes it clear that "an order under section 20C interferes with the parties' contractual rights, and for that reason ought not to be lightly made or as a matter of course but only after considering the consequences of the order for all those affected by it and all other relevant circumstances (SCMLLA (Freehold) Ltd [2014] UKUT 0058 (LC)). However, in Iperion, Peter Gibson LJ commented that "it is unattractive that a tenant who has been substantially successful in litigation against his landlord and who has been told by the court that not merely need he pay no part of the landlord's costs but has an award of costs in his favour should find himself having to pay any part of the landlord's costs through the service charge". He cited with approval the comment of Nicholls LJ in Holding Management Ltd - v- Property Holding and Investment Trust plc [1989] 1WLR 1313 that the landlord should not "get through the back door what has been refused by the front door".

177 In The Church Commissioners –v- Derdabi [2010] UKUT 380 (LC), HH Judge Gerald provides useful guidelines as to the exercise of our discretion. He suggests that we consider the degree of success enjoyed by (in this case) the Applicants, proportionality, the conduct of the parties and other "circumstances" such as the property being part of a resident-managed development. In St John's Wood Leases Ltd –v- O'Neil [2012] UKUT 374, the Upper Tribunal reinforced the principle that "whether the order should be made depends upon the facts and circumstances of the case and what is just and equitable in those circumstances" and that "the reasons why and amounts by which any service charge expenditure have been disallowed will always be important".

178 On the one hand we must balance Crown's contractual property right to have its costs paid (assuming our interpretation of the Lease to be incorrect) with, as we find, the Respondent's management failings which we have referred to in detail above. The Applicants have succeeded in obtaining substantial reductions in each of the years considered. All the administration charges were dropped. We have found that Mr Forbes' had not been credited with certain payments as a result of which his balance as shown on Regis' completion statement was not correct. We have also found that there is insufficient evidence to establish true balance of Mr Forbes' account in respect of flat 8. It was never suggested that nothing was payable. The Respondent abandoned any right to claim arrears accrued by previous owners. The Applicants argued that the overall management charges were too high. We agreed and they have been substantially reduced. The Solicitors' costs were challenged and we have disallowed them. In total we have reduced the service charges (which do not include the administration charges separately billed) over the period of 4 years by £11,533.93.

179 Certain issues did not really involve the actual amounts but rather the handling of the management issues associated with the costs. In such circumstances, the Respondents have really brought the dispute upon themselves. The amounts charged for the s20ZA application were not the issue. The underlying question was the Respondents' failure to carry through the consultation process and do the work earlier. Again, there was no real issue about Dawn Construction's invoices - except for the issue of who should pay for the doors of flats 7 to 10, a point we found in favour of the Applicants. The basic problem was that the Respondents had left matters in such a poor state that the Council felt the need to step in. The result was that there was insufficient time to find fully competitive tenders from contractors who could complete the necessary works within the Council's time frame. The amount of the accountants' fees was not challenged as such. Mr Forbes indicated early on that he did not challenge the 2012 accountancy figures and the challenges to the 2013 and 2014 accountancy charges was more to do with the lack of independence.

180 In respect of the insurance no reductions were made, but here the issue concerned the extent of cover and in the case of the 2012 Accounts, the reasons why a claim was not paid or credited to Mr Forbes. This understandably led to the concerns and indeed suspicions on the part of the Applicants. We have not been satisfied with the explanations provided by the Respondents. There was no reason why representatives of Countrywide or Regis or Pier Management could not have given evidence or at least provided the original documents relating to the claim. The loss adjusters could have provided copies of the relevant correspondence, reports, invoices and accounts. Instead we have received the impression that the Applicants and the Tribunal have been provided with only the barest information some of which leads to more questions.

181 Of course we must be careful not to visit the failings of Countrywide, Regis or Pier Management on the Respondents when considering the question of costs. However, when Crown took the assignment of the debts, it did so subject to equities. It will have realized when it purchased the Property that there were issues there. The arrears will have given an indication to any prospective buyer that there were management difficulties. The purchase price of £8,000 would have given Crown an annual return on ground rent of over 30%. Some element of 'slippage' in respect of outstanding service charges and the cost of recovery was therefore built in to the price paid.

182 As far as the Applicants are concerned, the Property is located in a low value area with a surprisingly high ground rent (£300 pa for most flats). The service costs will inevitably represent a higher percentage of the value per unit than they would in a higher value area. Disproportionately high service charges will therefore materially affect flat values to a greater extent. Mr Manley is of course right when he says in his submissions that the actual amount of the costs of this application which the Respondents may wish to charge is not the issue. That could well be the subject of a further determination by this Tribunal. However, we have been made aware that substantial amounts are involved. Costs of that order would not merely wipe out the value of our Decision, but would add a substantial additional burden onto the lessees. In our view that is oppressive. We accept that Mr Girijan, Messrs Evans and Mr Forbes purchased the flats as buy to let investments. However, they will have done so in the reasonable expectation of competent management and reasonable service charges. If they are to bear the burden of the Respondents' costs, including Solicitors' fees and Counsel's fees, the Respondents will have been allowed to defend their excessive charging with impunity. There is no justice in that. Apart from the immediate financial burden of the costs, the lessees would thereafter be discouraged from raising any further legitimate issues for fear of incurring additional substantial costs. As it is, Crown retains the freehold and its entitlement to a substantial ground rent, Management has received a reasonable amount for its management. The Respondents are a substantial organisation and the burden of their own costs will have a markedly less effect on them than it would on the lessees.

183 When considering the conduct of the parties, Mr Manley invited us to take note of the Applicants' behaviour, in particular that of Mr Collier. He referred to Mr Collier's statements that he wished to make life as difficult as possible for the Respondents, that he would ignore the Tribunal's decision if it went against him, that Mrs Williams of Countrywide was being fraudulent, as was Mr Fox, that he adopted different positions on issues at different times and his making of many personal remarks throughout the proceedings. Mr Manley also pointed out that Mr Collier was warned by the Tribunal about his behaviour several times. Mr Manley submitted that as the other Applicants had 'ridden on Mr Collier's coat tails', they were tainted with his behaviour. He asked us to bear in mind that the Respondents found themselves in a difficult situation. They have attempted to do what they could. Getting the work to the Property done was significant. They had made appropriate concessions at all times, tried to obtain information from third parties and throughout maintained a calm and cool demeanour. They had not brought these proceedings. Mr Manley anticipated that there would be general deductions over the different years in question but unless there were, what he referred to as, sweeping deductions there was no justification for making an order under s20C.

184 The Applicants argue that it is a matter for the Respondents if they choose to instruct Solicitors and Counsel. Mr Collier made the initial application under the belief that there were limited costs. Whilst apologising for his behaviour, he explained that he was frustrated by the Respondents' answers, their failure to provide satisfactory answers or documentation, their behaviour and selective memory loss. Mr Girijan, Messrs Evans and Mr Forbes, argue that they should not be held responsible for Mr Collier's behaviour although they empathise with his anger.

185 The question is on the facts of this case how to balance the issues which we have outlined. We accept that if Crown has a contractual right for its costs to be paid, we must not make such an order lightly. However, we cannot ignore the fact that they did claim moneys to which they were not entitled (albeit conceded before the substantive hearings), they did in our view deliberately make things difficult for Mr Girijan and Mr Forbes to gain access for limited periods as a means of encouraging payment of service charges, the summaries of the insurance policies did not provide all the information which the lessees needed, they only dealt with the repairs after the involvement of the local authority and their evidence was occasionally contradictory and at times simply not credible. The Applicants have gained substantial reductions in their service charges. Even where there were no reductions, the issues were not the amounts and reasons for the issues being raised generally emanated from the Respondents' own attitude or conduct. It is, with respect to Mr Manley, totally unreasonable for the Respondents to seek to discredit Mr Girijan, Messrs Evans and Mr Forbes because of Mr Collier's abrasive conduct and intemperate language. They have adopted many of Mr Collier's arguments, they empathise with his anger but they behaved throughout reasonably and responsibly and in our view were credible witnesses. We no more taint Mr Girijan, Messrs Evans and Mr Forbes with Mr Collier's behaviour than we do the Respondents with the conduct of Countrywide, Regis or Pier Management.

186 We do not in any way condone some of Mr Collier's behaviour. Emotions can and do occasionally run high particularly in unfamiliar circumstances. It may well be that the informal nature of the proceedings encouraged the belief that he could be somewhat freer in his conduct than he would have been in the more formal environment of a County Court. Mr Collier was undoubtedly frustrated and lacked the calming presence of his own Solicitor or barrister. What had started out as a low cost examination of the charges which Mr Walker had been required to pay in 2013 and 2014 and faced having to pay in 2015 was turning into a very expensive nightmare. He described some evidence as fraudulent. It is not a word which we would have used. However, as commented above, we have found some of that evidence not to be credible. Other evidence such

as that relating to the insurance policies was incomplete. In fairness to Mr Collier some of the remarks were in response to Mr Manley's cross-examination during which he had been led, through a series of questions, to a conclusion which was perhaps more extreme than it had started out being. Someone with a little more experience might well have been able to manoeuvre his way around the question. The same is true of some of his other remarks - wanting the application to cost more was when he had applied for an adjournment when part of the objection to his application was that an adjournment would increase the costs. Twice in the space of a few questions Mr Manley asked Mr Collier if he wanted to make it as difficult as possible initially because Mr Collier had objected at the PTR to the inclusion of the 2012 Accounts in the application. He did refer to the 2013 Accounts as "fraudulent". Although issued in July 2014, they were dated 28th March 2014 to fit within the timescale set out in the lease. He also referred to the estimates from Mr Yarlett and Mr Watts own company as "fictitious", a word he later conceded as "strong". Mr Yarlett was from Kent and Mr Collier believed that he had not inspected the Property as he would have had to have a key from him. Mr Watts was from Norwich. It was also Mr Manley who asked Mr Collier if he was suggesting that Tina Williams (Countrywide), Mr Fox (the insurance broker) were conspiring with Crown. The relevant part Mr Collier's response was that he did not trust them. When he was asked about the costs of Crown's attempting to recover outstanding money from Mr Neild, Mr Collier remarked that either the mortgagees would pay the costs or, failing that, Crown could forfeit the lease. His final position was that he would not pay.

187 We have gone into a little detail on this point in an effort to put Mr Collier's behaviour into perspective. In addition, there were occasions when Mr Collier's remarks were less than complimentary and we believed that on one occasion he did upset Mrs Haines. However, he was giving evidence for over a day and a half, the cross-examination was fairly intense (we do not for one moment criticise Mr Manley for that) and as the Applicants were unrepresented, it was left to the Tribunal to direct him to be more temperate in his language.

188 Of course, it was not just a one way street. Part of Mr Manley's cross-examination was directed to showing that Mr Collier at one time considered making a claim on insurance in respect of an event which he knew or must have known had occurred prior to his ownership. As mentioned above, Mr Collier did not in fact make such a claim. In their closing statement, Mr and Mrs Haines refer to aspects of the Applicants' case as a "spurious claim", a "false claim" and "complete fabrication".

189 We also cannot ignore the conduct of the Respondents' Solicitors, Hatch Brenner and Cozens-Hardy LLP, who in our view were rightly criticised by the Applicants. The letter of the 28th October 2014 from Hatch Brenner, states that "it should be possible to pursue any outstanding service charges against the current lessee if they were not cleared when they purchased the flat". Cozens-Hardy appears to have adopted that view as they initially pursued the claim for the full arrears. Neither was aware of the Welsh Regulations. Cozens-Hardy introduced hundreds of documents many of which were unnecessary. The first three bundles were not paginated. Documents were repeated, in some cases in the same bundle. Further, where an e-mail was sent, that was included as one document. If the recipient's reply was appended to the initial e-mail, both were introduced as a second document. If there was a response to that e-mail, all three e-mails were included as a third document. This made it very difficult at times for the Tribunal and, we suspect, for the parties as well. We were also asked to discount Mr Collier's final submissions on the grounds that he had failed to send a copy to them by the prescribed date. When we came to consider closing submissions, we noticed that Mr Manley referred to the replies of Mr and Mrs Haines supposedly attached to his submissions. They were not. A copy was requested and was sent.

DETERMINATION

190 Exercising our discretion and after taking into account all the relevant circumstances, we have concluded that the application under section 20C must be granted. To do otherwise, would deprive the Applicants of the benefits achieved as a result of this application having been brought and would in fact add significantly to their financial burdens. If these proceedings had not been brought, the Respondents would not have waived costs to the extent we have determined as not reasonably incurred. S20C was introduced so that lessees with legitimate claims are not deterred from seeking a fair resolution from this Tribunal. We accept that Mr Collier was immoderate at times in his language and behaviour. We do not excuse it, but we do not consider that it has affected the course or the outcome of this application or materially added to the time taken in dealing with it. We therefore ORDER that none of the costs incurred by Crown in connection with these proceedings is to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants. In other words, none of the Respondents' costs in connection with this application is to be included in the Applicants' service charges.

SCHEDULE 12 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

191 At the conclusion of the hearing, Mr Manley invited us to consider making a determination under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 (paragraph 10) that the Applicants shall pay the Respondents' costs (up to the statutory limit) on the grounds that they, and in particular Mr Collier, have acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with these proceedings. His argument was essentially that put forward opposing the Applicants' s20C application, in particular the conduct of Mr Collier. Mr Girijan, Messes Evans and Mr Forbes also asked that we order the Respondents to pay their costs. They refer to the Respondents' false evidence, an accusation of threatening behaviour, an accusation of receiving insurance money and of not paying anything to Crown. They have all lost time at work, travelling costs and some legal costs - incurred before the hearing. They have lost rent. Mr and Mrs Haines denied accusing the Applicants of threatening behaviour or of receiving any pay out from the insurance company. Nor did they say that all lessees had not paid. That applied only to some. They dispute that the Applicants have lost rent. They denied that the loss of rent was due to the water damage. Messrs Evans' and Mr Walker's flats were not affected by the water damage. Of those that were affected, only Mr Girijan's has been repaired. Mr Neild and Mr Forbes have not attempted to repair flats 10 and 8.

192 Paragraph 10 relates to the manner in which the parties conduct the proceedings. Pursuing or responding to an application is not of itself what is envisaged, although pursuing a claim without merit or engaging in a response without good reason may well be considered such. It is not so much the elements of this case that we are concerned about but the manner in which it has been conducted. We have commented above about Mr Collier's behaviour which was at times beyond what we would normally expect. However, these were only occasional comments or remarks. We do not consider that they were of a frequency or seriousness for us to regard them as falling within paragraph 10. We understand the pressures which witnesses are under, particularly when they are being cross-examined, and it would be a poor application of the statute to penalise parties for giving in to that pressure and using somewhat intemperate language. The Respondents were not in any way prejudiced as a result.

193 We have indicated above our views of the relative credibility of the witnesses and have made our findings clear. We do not recall accusations of threatening behaviour (which was not particularised) nor was there any suggestion that Mr Forbes had received any money from the

insurance company. The Respondents say that the money was paid to the loss adjusters as costs. Apart from the payments by Mr Forbes to Pier Management in respect of ground rent and insurance, we were not aware that there any issues relating to the actual amounts paid. If there are, the parties are given leave to refer the application back to this Tribunal for further determination. Although the conduct of the Respondents may be relevant, issues relating to loss of rent are not matters for this Tribunal.

194 We do not consider that either party has raised sufficient grounds for us to determine that the other party's conduct falls within paragraph 10 and so we decline to make a determination that the either party shall pay costs to other.

RHEOLIADAU TRIBIWNLYSOEDD PRISIO LESDDALIADAU (FFIOEDD)(CYMRU) 2004
LEASEHOLD VALUATION TRIBUNALS (FEES)(WALES) REGULATIONS 2004

195 In our directions of the 17th July 2015, we drew the parties' attention to our powers under regulation 9 of the above regulations (the Fees Regulations). In his oral submissions, Mr Manley referred us to his earlier arguments regarding costs. Mr Collier suggested that the Respondent's behaviour should be taken into account.

196 We accept that, for example, if a lessor or lessee put forward a totally unmeritorious claim, he/she should not be entitled to have his/her costs reimbursed. Similarly, if a lessor or a lessee is totally successful, then it is arguable that the fees should be repaid by the opposite party. However, we consider that with this aspect of the case, we need to consider rather more. The Tribunal has given the parties a forum in which to raise issues which otherwise would have continued to fester. It has resolved many of the differences between the parties. It may have satisfied some more than others, but it has - except for one issue - been a process whereby historical issues can be dealt with and hopefully forgotten about and the parties look to the future with a greater sense of co-operation than has been evident in the past. The lessees have been largely successful and we therefore consider that some order should be made. However, the only way for the issues to be resolved was if the matter was referred to the Tribunal. That inevitably means some cost. The Applicants have the benefit of the determination. They should be prepared to pay something for that certainty. However, the Respondents have that benefit as well. They will be able to use our determination as the basis for recovery should any of the lessees default. It is reasonable that they too should contribute to the cost.

DETERMINATION

197 Since the determination of this application has benefits for both parties, we consider that it is reasonable that the Tribunal costs should be shared equally between the Applicants on the one hand and the Respondents on the other. We therefore require Crown to reimburse the Applicants, or as the case may be whichever Applicants made the payments, to the extent of one half of the fees paid to the Tribunal in respect of this application including one half of any hearing fee.

SUMMARY

198 In respect of the 2012 service charges
(a) We have determined that the amount of £5,726.23 was not reasonably incurred, but that the amount of £3,619.23 was reasonably incurred.
(b) Mr Neild and Mr Forbes are entitled to credits in respect of each of the flats they own in the sum of £210.70.

(c) Mr Forbes is also entitled to further credits in respect of the amounts paid namely £180.25 in respect of each of flats 4 and 8.

(d) With regard to flat 8, we are on the basis of the information provided by the parties unable to determine the amount which is payable by Mr Forbes until the balance of his account is either agreed or, if the parties are unable to agree, determined at a future hearing.

In respect of the Regis 2013 service charges

(a) We have determined that the amount of £2,351.92 was not reasonably incurred, but that the amount of £1,450.96 was reasonably incurred.

(b) Mr Walker, Mr Neild and Mr Forbes are entitled to credits in respect of each of the flats they own in the sum of £90.10.

In respect of the Crown 2013 service charges

(a) We have determined that the amount of £3,626.29 was not reasonably incurred, but that the amount of £2,929.29 was reasonably incurred.

(b) Mr Walker, Mr Neild and Mr Forbes are entitled to credits in respect of each of the flats they own in the sum of £69.70.

In respect of the 2014 service charges

(a) We have determined that the amount of £14,812.15 was not reasonably incurred, but that the amount of £11,131.48 was reasonably incurred.

(b) The Applicants are entitled to credits in respect of each of the flats they own in the sum of £368.07.

In respect of the sums to have been paid on account of the 2015 service charges

(a) We have determined that the amount of £11,000.00 was not reasonable, but that the amount of £6,900. was reasonable

(b) The Applicants are entitled to credits in respect of each of the flats they own in the sum of £410.00.

Apportioned amounts may need to be credited where an Applicant acquired a flat during the course of a year.

FURTHER DIRECTIONS

199 We are not clear as to what payments have been made in respect of each of the service charge years we have considered.

(a) The Respondents are therefore directed at no cost to the lessees to prepare amended service charge accounts and statements of account for each Applicant having regard to our determinations and to deliver them to each Applicant within 28 days of the date of this Decision.

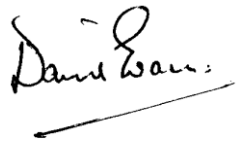
(b) Provided an Applicant agrees the balance, that balance is to be paid to Crown Builders Ltd through its agent Crown Management UK Ltd in respect of each flat within 56 days of this Decision. (c) If any Applicant disagrees with the amount of the balance, he shall pay to Crown Builders Ltd through its agent Crown Management UK Ltd the amount that is agreed within 56 days of this Decision and any dispute relating to the balance payable is to be referred back to this Tribunal by either party within that period of 56 days.

(d) Mr Forbes and the Respondents shall use all reasonable endeavours to attempt to resolve the issue of the 2012 insurance claim within 28 days. If resolution is achieved, and such resolution results in a balance payable by Mr Forbes, the amount so payable shall be paid to

Crown Builders Ltd through its agent Crown Management UK Ltd within 28 days of the date of such resolution. Any credit balance following such resolution shall be carried forward as a credit against future service charges.

(e) If Mr Forbes and the Respondents are unable to resolve the issue within that period of 28 days, either party may apply to restore this application for further determination of the amount payable by Mr Forbes. The Tribunal will then give further directions as to its disposal.

DATED this 28th day of June 2016



CADEIRYDD/CHAIRMAN