10663

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CHI/29UD/LIS/2013/0031**
Property	**: Dunlop Close** **Dartford** **Kent** **DA1 5LY**
Applicants	**: Ms L. Caiels and others**
Representative	**: Ms L. Caiels**
Respondent (1)	**: Joyce Green Management Co. Ltd.**
Representative	**: Canonbury Management**
Respondent (2)	**: Piervalley Ltd.**
Representative	**: Estates and Management**
Type of Application	**: Service charges** **Section 27A of the** **Landlord and Tenant Act 1985**
Tribunal Members	**: Judge R. Norman (Chairman)** **Mr. R. Athow FRICS MIRPM** **Mr. P. Gammon MBE BA**
Dates of Hearing	**: 19th September 2013** **1st September 2014** **20th October 2014**
Date of Decision:	**10th February 2015**

DECISION

Decision

1. The Tribunal, made the following determinations:

(a) Joyce Green Management Co. Ltd. ("the Company") or J. Nicholson & Son ("the current managing agents") on behalf of the Company, will re-compute the service charges in respect of the years 2010/2011, 2011/2012 and 2012/2013 in accordance with the sums found to be payable as set out in paragraphs 20 to 22 inclusive below. Within one calendar month of receiving this decision, the Company or the current managing agents on behalf of the Company will then send demands or make refunds to Ms L. Caiels and the other Lessees named in paragraph 2 below (collectively referred to as "the Applicants") in accordance with those re-computed service charge calculations. This decision will then become final and any service charge demands in accordance with the re-computation will be payable within one calendar month of their receipt by the Applicants.

(b) An order is made under Section 20C of the Landlord and Tenant Ac t 1985 ("the 1985 Act") that all or any of the costs incurred or to be incurred by the Company in connection with 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 Applicants.

Background

2. In addition to Ms L. Caiels, the lessee of 63 Dunlop Close, the following lessees have been joined in these proceedings as Applicants:

Mr. C. Chilton & Mr. Longhurst - 32
Mr. & Mrs. Freeman - 70
Mr. & Mrs. Bowring - 8
Miss N. Tafa - 52
Mr. S. Daby - 54
Miss L. Scales - 57
Ms E. Cosh - 62
Ms V. Sharp - 72
Mr. B. Osbourne - 10
Ms J. Young - 60
Mr. & Mrs. Josiah - 158
Ms I. Nwaogbo - 96

3. The Applicants are lessees of flats at Dunlop Close, Dartford, Kent DA1 5LY ("the subject property") and Piervalley Limited is the freeholder of that estate. Estates and Management representing Piervalley Limited have been kept informed of these proceedings but have taken no part in them because the collection of service charges is the responsibility of the Company.

4. This application concerns the years 2010/2011, 2011/2012 and 2012/2013. In respect of those years, the managing agent dealing with the estate for the Company was Canonbury Management ("Canonbury") and representatives of Canonbury, in particular Mr. McElroy, have dealt with the

subject matter of these proceedings, have provided documents and have attended the hearings. By a letter dated 28th March 2014, Mr. McElroy informed the Tribunal that Canonbury's contractual relationship with the Company ceased on that day. The current managing agents took over the management on 1st April 2014 and Miss J. Maidman BSc(Hons) MRICS of that firm provided documents and attended the later hearings.

5. The shareholders in the Company are the lessees of flats on the estate but at the start of these proceedings there was a lack of knowledge of even the existence of the Company. Consequently, there was a lack of awareness of:
(a) The Company's duty to manage the estate including, for example, carrying out repairs and decoration to the common parts and paying charges for electricity to serve the common parts.
(b) The lessees' obligation to pay service charges in respect of the cost incurred by the Company in managing the estate.

6. Mr. McElroy of Canonbury attended the hearing on 19th September 2013 on behalf of the Company. Directions were issued which included a direction that by 1st January 2014 the Company was to supply the names and addresses of the members/shareholders of the Company with their flat numbers, current addresses for correspondence and evidence of how they came to be members/shareholders and how they were notified of having become members/shareholders. That direction was not complied with but eventually some information was provided.

7. The current managing agents have provided a list of the directors which shows that Mrs. C. Casey and Ms Temi George are the only directors at the present time. However, attempts to contact Ms George have met with little success. Mr. J. W. Senior was appointed a director on 8th December 2009 and his appointment was terminated on 16th October 2012. Mr. P. Sleigh was appointed on 23rd June 2010 and his appointment was terminated on 11th June 2012. At the present time the only director taking any active part in the Company is Mrs. Casey. She is represented by her husband who has attended the later hearings.

8. The evidence from Mr. McElroy was that on matters relating to the management of the subject property Canonbury was, at the then current directors' instructions, required to consult with Mr. Senior, who had expertise in the building industry. He would agree budgets and give authority for work to be done and bills to be paid. This may have been a practical arrangement as management of the estate was necessary but after Mr. Senior left, Canonbury appear to have continued to have work carried out, have paid for it and have demanded service charges perhaps without proper authority. They have deducted their charges from money collected.

9. The Applicants alleged that there was a lack of maintenance, that some of the work carried out was not to a reasonable standard, that charges made for some items were not reasonably incurred and that some charges could not be charged to the service charges. They also found that the leases require that the Company keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations and that an account shall be taken

on the 31st March each year of the said costs charges and expenses incurred since the date of the commencement of the term or of the last preceding account as the case may be. Also that the accounts shall be prepared and audited by a qualified accountant who shall certify the total amount of the said costs charges and expenses. An audit had not been carried out in respect of the years in question.

10. Eventually, during the course of these proceedings and after considerable delay, an audit of the accounts was carried out. Miss Maidman examined the documents provided and was able to give an explanation for some of the sums claimed. The fact that the current managing agents had been appointed only comparatively recently meant that in respect of many items she could only suggest that Canonbury provide explanations. However, she was able to point out charges which were tenant specific as opposed to those which were chargeable to all lessees as part of the service charges. When, eventually, the accounts and invoices were produced, Ms Caiels was able to make a list of charges which required an explanation from Canonbury. In advance of the later hearings there should have been a meeting between Ms Caiels and representatives of Canonbury to clarify the issues but no such meeting took place. It was only at one of the hearings that there was such a meeting and as a result the list of items disputed was reduced and it is those items in respect of which the Tribunal has made a determination. The items are referred to by the numbers given to them by Ms Caiels.

11. Statements of case were produced by Ms Caiels and by Canonbury.

Inspection

12. On 19th September 2013 the Tribunal inspected parts of the subject property in the presence of Ms Caiels. At the hearing which followed, we were shown a renovations plan on which it was stated that external communal doors and windows redecoration had been completed in respect of Blocks A, B and C July – August 2013 but at the inspection there was nobody present on behalf of the Company to point out anything such as decoration which had been done.

13. The Tribunal observed the following:

(a) We saw the exterior door of Nos. 55-65 odd which Ms Caiels knows as being part of Block D but Block D has 2 entrances and, apparently, Canonbury have referred to both entrances as D without the numbers of the flats. The entrance to Nos. 55-65 odd was damaged and in need of decoration. Inside the entrance to 55-65 odd we saw the hall, stairs and landings. Decoration was needed. There were cracks to the plaster around doors etc. The decoration appeared to be the original decoration. There was an electric heater in the hall (at the hearing we were told that the electric heaters in the halls had been turned off). The lights were on timer switches. It was indicated on the renovations plan received at the hearing that decoration of Block J was to commence in September 2013 but we did not see evidence of that at the inspection.

(b) External decoration to window frames was needed. Ms Caiels said the windows had not been cleaned.

(c) At the entrance to 49-53 odd which was the entrance to the other part of Block D we could see that the internal common parts had recently been decorated.

(d) Inside the entrance to 116-154 there were no controls on the electric heater in the hall. The internal decoration appeared to be the original. There were at most 20 lights on the stairs, hall and landings so consumption of electricity would be minimal.

(e) We could see that the external weatherboard to 102-114 even had recently been painted black but other than that, decoration outside and of the common parts was needed.

(f) We saw a bike shed and Ms Caiels said that the last time she tried to open the door she could not do so but at the inspection the shed was found to be open and appeared to have had the lock glued in the open position so that the shed could not be closed or locked.

(g) To the rear of one block, Ms Caiels pointed out close boarded fencing which had not been repaired but it appeared to us to be beyond the boundary of the subject property marked by a post and rail fence. It would have been necessary to measure to be completely sure but, if that were the case, then the close boarded fence would not be the responsibility of the Company.

(h) There was staining (efflorescence) on a brick wall apparently as result of a leaking overflow. On another part of the subject property an overflow was leaking.

(i) The grass and shrubs would need to be cut but were in reasonable condition.

Hearings

14. There were hearings on 19th September 2013, 1st September 2014 and 20th October 2014. After the last hearing, the Tribunal re-convened to consider what had been seen at the inspection, the substantial amount of documentary evidence and the evidence given and submissions made at the hearings. Findings of fact have been made on a balance of probabilities.

Reasons

15. The Applicants challenged items of service charge on the basis that they could not be charged to the service charges under the terms of the lease and/or they were excessive and were not reasonably incurred. Canonbury were called upon to justify the charges by producing evidence that the charges could be charged to the service charges and that they were not excessive and were reasonably incurred.

16. Difficulties were caused by the fact that Canonbury relied on data held electronically and asserted that the lessees could access that data to find out all they needed to know about matters such as service charges and invoices for work done. Mr. McElroy asserted that the lessees could obtain full access but later conceded that only the directors of the Company could do that and that the Applicants would have only limited access. The reliance on data held electronically also meant that Canonbury could not produce evidence of Canonbury's first contract with the Company.

17. Difficulties were also caused by:

(a) Canonbury's policy of charging to the service charges, and therefore claiming from all lessees, sums payable by individual lessees and failing to pursue individual lessees for money due from them individually.

(b) Canonbury's propensity to have a maintenance contract and then make additional charges

18. In respect of some of the items challenged, the evidence given by Canonbury was vague. Some of the charges were for works undertaken by companies that were associated to Canonbury and many references were "as per contract", but no contracts were submitted to the Tribunal.

19. Some of the charges which are not payable by the Applicants may be payable by the Company.

20. Year 2010/2011

(A) Items 15 and 16 postal charges.

(i) The evidence from Canonbury was that there had been two contracts between the Company and Canonbury. The first was in force for the year 2010/2011. That first contract had been overhauled on the website and Canonbury could not produce a copy of the relevant part of the first contract. Under the second contract, which was in force for the years 2011/2012 and 2012/2013, there is no provision for postal charges to be charged separately and they have not been charged in the year 2012/2013. In the first contract there was a charge of £1.99 per item for postage of extra items which were not part of the ordinary day to day management of the subject property such as dealing with a water leak or some other dramatic event. Under the first contract Canonbury's basic charge was £89.29 + VAT per flat which was a low figure by general industry standards. After the first year Canonbury decided to absorb postal charges into the general costs. The changes came about in either the second or third year of management and correspondence costs stopped. Mr. McElroy was not sure exactly when they stopped.

(ii) The charges appear in the accounts for 2010/2011 and 2011/2012 but not 2012/2013. In the absence of any other evidence, the position under the RICS Code that postal charges be included in the fee should apply. These postal charges are not payable through the service charges.

(B) Items 17 and 18 cheque payment surcharge.

(i) The evidence from Canonbury was that letters were sent to lessees who were paying by cheque advising them of the free methods of payment. The charges were not dealt with as being tenant specific and came out of service charges under the terms of the first contract but that could not be seen. The cheque payment surcharge was later dropped as being out of date and is not in the second contract. Maybe charges had been made to individual lessees pre-2009 but in respect of the subject property, the surcharges had always been charged to the service charges. There had been only a nominal number of such charges.

(ii) Again, the first contract could not be seen to support any contractual justification for adding these charges to the service charges. In any event, if any such charges are made at all and are payable, they should be charged to the lessees making payment by cheque not included in the service charges. In the absence of any other evidence, the position under the RICS Code that such charges be included in the managing agents' fee should apply. These cheque payment surcharges are not payable through the service charges.

(C) Items 35 and 36 fees for undertaking Land Registry searches.

(i) It was agreed that these charges had not been treated as tenant specific and had been included in the service charges because Canonbury had deemed it reasonable to charge such charges to the service charges.

(ii) It was right to obtain information from the Land Registry and right to pay the charges from the service charges initially, as the money to pay the charges had to come from somewhere. However, under the leases such charges are recoverable from the individual lessees and Canonbury should have tried to recover them but because of the policy of Canonbury not to seek to recover in these cases, the charges were unreasonably incurred and are not payable through the service charges.

(D) Items 37 and 38 charges for obtaining interpretations of clauses in the leases.

(i) Mr. McElroy stated that in some blocks not all leases are the same. The leases were analysed on a case by case basis. If it were presumed that all leases were identical and the particulars of claim were drafted on that basis Canonbury could find themselves in court arguing nonsense. He did not know if any differences between the leases had been found at the subject property.

(ii) Miss Maidman pointed out that there were fifteen lease interpretation charges but, just like the Land Registry fees situation, no evidence of charging back to the individual lessees.

(iii) The Tribunal noted that there was no evidence of income into the client account that would demonstrate what had happened. There was no evidence of the money being paid into service charges accounts. Mr. McElroy thought that the payments may have been put in somewhere else by the auditor. The

Tribunal was concerned that income was not shown and that even though a number of months had been allowed to have the accounts audited there was still not the full picture. Mr. McElroy explained that it was not Canonbury's choice of auditor and that the Company had chosen the auditor. Asked if the accounts had been signed off each year, Mr. McElroy did not know. Canonbury had not instructed the accountants. They had been instructed by the Company. Canonbury had not asked for accounts each year so they could not have been signed off. Ms Caiels stated that it was difficult to work out what was going on.

(iv) As to the choice of auditors, Mr. Casey explained that he had a meeting with Mr. McElroy who wanted £12,000 for the audit. Mr. Casey found someone cheaper. Mr. McElroy wanted to speak with them first but the accountants say that Mr. McElroy would not return calls. Mr. Casey went to the bank and the Company's account had been set up so that he could not get details of it. It had been set up in a different name and to have access, authority from Canonbury was needed. He contacted Canonbury asking for bank statements and they refused to provide them. The accountants could not do a proper audit until they received the bank statements but he thought that the accountants received most of them except for the last few months which were not available at the time.

(v) Mr. McElroy's explanation was that Canonbury had a quote of £12,000 from a London firm of well respected accountants to audit the three years' accounts. That firm was used to preparing accounts in the correct form but Mr. Casey said it was expensive and appointed other accountants who were significantly cheaper but had no, or limited, experience of service charge accounts and they did not know what to do with the data sent to them. The bank account was in the name of the Company and received data by electronic data feed to Canonbury's computer base. Mr. Casey was told that statements were only available at a cost. Asked if there was any quality control over the accounts, Mr. McElroy said that previously there had been a good relationship with a director, Mr. Senior, but then it broke down. Mr. Casey was not happy and there was not a productive working relationship with him. Canonbury had produced data electronically to the accountants and had produced everything sent to them electronically. The Tribunal noted that the accounts have an index including income and expenditure but the income had been omitted from what was received by the Tribunal. Mr. McElroy stated that Canonbury had in good faith produced what had been produced to them.

(vi) On behalf of Canonbury Mr. McElroy stated that these charges for obtaining interpretations of clauses in the leases had not been charged back to the individual lessees and he did not know why. He understood that they were set up to be charged back but accepted that this may be systemic; just the way things work. It was a one catches all approach. The charges were charged to the client account and not charged back to the lessees. He accepted that these charges fell into the category of service charges not charged back to lessees.

(vii) Canonbury operated a system whereby sums which should have been charged to specific lessees were charged to the service charges payable by all

the lessees. No doubt that was easier to do but was not the correct way to deal with the charges.

(viii) It was right to pay for obtaining interpretation of leases from the service charges initially as the money had to come from somewhere but under the leases the charges were recoverable from individual lessees and Canonbury should have tried to recover them. However, because of Canonbury's policy not to seek to recover in these cases, the charges were unreasonably incurred and not payable through the service charges.

(E) Item 43 court fees in relation to legal recovery against lessees.

(i) Mr. McElroy referred to paragraph 43 on p 12 of the document produced by Canonbury titled the respondent's statement of case which explained what the charges were for. He did not know if any of the charges had been charged back to the lessees but some had not.

(ii) It was right to pay from the service charges initially as the money had to come from somewhere but under the leases they are recoverable from individual lessees and attempts should be made to recover. However, because of the policy of Canonbury not to seek to recover in these cases the charges were unreasonably incurred and not payable through the service charges.

(F) Item 46 electrical repairs.

(i) Mr. McElroy referred to paragraph 46 on p 13 of the respondent's statement of case. The work was done by Agostino Digioa, an electrical engineer who worked for the building division of Canonbury. The work included sending an electrician to the subject property to install earth straps following a report of electric shocks from the water supply and included time for co-ordination with an EDF engineer on site. There was no invoice from EDF so presumably there was no charge from EDF. Mr. Senior wanted periodic inspection reports for every block. There was no invoice from the contractor because it was the building division of Canonbury. There were no other quotes. All quotes went to the director, Mr. Senior, to agree. He was contacted and said to go ahead. Because there was an electrical danger it was necessary to move quickly. There were at least two visits to the estate.

(ii) The Tribunal found that the charge of £615.16 was reasonably incurred and is payable through the service charges.

(G) Item 47 electrical lighting maintenance contract.

(i) At p 149 of the Company's bundle there is a letter dated 26th November 2010 from Canonbury to Mr. Senior, in which Canonbury proposed to provide maintenance of lighting, emergency lighting, intercom and access control for £15,500 per year including VAT. Mr. McElroy said he had put the contract together so that everybody knew where they stood and there would not be additional bills. An email dated 14th December 2010 purportedly from Mr. Senior instructed Canonbury to please proceed with the contract with immediate effect. The charges were limited to £15,500. There was nothing in

the contract to deal with anything becoming redundant. It was badly drafted by Canonbury. Mr. McElroy had been dealing with Mr. Senior who worked for a London company and regularly dealt with tendering. Mr. McElroy stated that Mr. Senior is deemed to be expert and had extensive experience over at least 20 years so no alternative quotes were obtained.

(ii) Mr. McElroy explained that normally Canonbury organise an agreement at the beginning of the year. It means that there is a known fixed cost at the outset of the year. In this case the contract had already been set for the year. There were considerable electrical difficulties at the blocks at the subject property. There were discussions with Mr. Senior during which it was agreed to put in place an all encompassing maintenance arrangement so as to put a limit on total costs, and issues could be resolved within the framework of that agreement. It was better than having individual call outs to the subject property. There is a lot of electrical plant at the eleven blocks at the subject property. It was decided to change timer switches to photocell but Ms Caiels stated that in her block that had not been done and at the inspection the Tribunal had seen timer switches. Mr. McElroy agreed that not all had been done. He was not sure if this charge referred to external lights and floodlights. There was a whole range of mechanisms. Canonbury more recently took on the cost of replacing equipment and charge an annual maintenance contract. There are 12 visits a year and within the contract there is absorbed the cost of replacement parts and bulbs and it is therefore in the interests of Canonbury to upgrade to LED where possible. There had been a particular issue with theft of lights at the subject property. LED lights were at first quite expensive at £10-£15 each but are now much cheaper. They have longevity, use 10% of the electricity used by incandescent bulbs and have instant brightness so are suitable for common parts. The aim of Canonbury is to avoid telephone calls about lights going out so they replace with LED fittings where possible. To obtain access to floodlights a cherry picker is needed and so it is expensive. By replacing them with LED floodlight units there are significant cost savings. Photocell switching mechanisms are preferable to motion sensitive. Generally photocells are used to replace motion sensor on failure of the existing switch. Some timer switches have a mechanism on the consumer unit and others on the wall itself.

(iii) Mr. Casey stated that he did an inventory of every uplighter at the subject property and noted that the lights were mainly candle not LED. He received an email from Mr. Kyle David of Canonbury saying that on a whole floor the lights were out because of theft of bulbs. Mr. Casey checked and found that all were in place in every block. He queried who had reported it but had no response.

(iv) Mr. McElroy stated that Mr. Graham Scott had attended the site. His contract was to replace bulbs and he said they were not being stolen but electricians say bulbs are being stolen by particular tenants and that some tenants also ran electricity from the communal supply. Information is not perfect. An asset log was kept but an electrician previously employed by Canonbury was not updating the log. Mr. McElroy was not sure when that electrician left but alleged that he stole Canonbury client database and offered to do work cheaper.

(v) Ms Caiels did not accept that half the work had been done. All blocks have push switches and there was no evidence of work done. Every year the charges had gone over budget. Mr. Casey considered that Mr. Senior as a director had authority to agree but his agreement was for £15,500. Not £22,000.

(vi) Mr. McElroy had no suitable explanation for why the cost should exceed £15,500 and the Tribunal finds that only that sum was reasonably incurred and payable through the service charges.

(H) Item 49(a) charge for detailed property inspection.

(i) Mr. McElroy. Explained that Canonbury's in house architect carried out full dilapidation surveys. There were a few issues with which Mr. Senior was concerned such as the development fencing which had been left. This was raised with the developers. There was also post and rail and other fencing which had not been completed by the developers. There was also ponding on the car park. Canonbury needed to identify specific capital costs to be met by each block and to present to the directors through the Canonbury task system, sometimes with photographs, with prescribed solutions fully costed. The directors would authorise work if there was money available or authorise the funding by a change of service charges. The directors could view through the online system for authorisation. On-screen authorisation was not in place for the whole time but the directors could look on screen and authorise in other ways such as at meetings. He did not know when the annual inspection was carried out but it would be usual to be within the first six months of Canonbury's contract with the Company. He thinks Canonbury took over in March 2010. The budgets remained the same for all three years because they were always set by the directors.

(ii) The Tribunal found that it was reasonable for such an inspection to take place and to budget for it and not unreasonable to exceed the budget. £3,028.48 was reasonably incurred and is payable through the service charges.

(I) Item 49(b) charge for 9 months domestic assistance.

In accordance with the RICS Code, there should be in place a contact system for out of hours emergencies. This is a way of dealing with that requirement. The Tribunal found that the charge was reasonably incurred and is payable through the service charges.

(J) Item 49 (f) charges for legal recovery.

(i) Mr. McElroy in the respondent's statement of case stated that these charges related to particular flats for the failure to pay estimated service charges at the outset of the year. However, he did not know exactly what they were for and if recovered or not.

(ii) It was right to pay from the service charges initially as the money had to come from somewhere but under the leases they are recoverable from individual lessees and attempts should be made to recover. However, because of the policy of Canonbury not to seek to recover in these cases the charges were not reasonably incurred and not payable through the service charges.

(K) Item 49(h) charge for inspection of electrics.

(i) Mr. McElroy stated that this was an industry standard test checking every consumer board in the buildings and that there were more consumer boards as there was Economy 7 in addition to lighting and power. It was carried out within the first 6 months at the request of a director to better understand the electrical issues the blocks have. It was off the back of those inspections that the maintenance contracts followed. The price for this work was arrived at by a fixed formula and it would take two men half a day for each of the 11 blocks.

(ii) However, Mr. Casey stated that there were 5 sockets and one socket for a storage heater in a block. Allowing for that and 2 consumer units per block an inspection would not take long.

(iii) The records show 5 blocks done on 15th September, 3 on 16th September and 3 on 17th September; a total of 3 days work.

(iv) It was right that the inspection should be carried out but on the basis of the work involved, the Tribunal's knowledge and experience and the records of the numbers of blocks inspected each day, £5,194.97 was excessive. The Tribunal found that £100 per block would be reasonable and therefore for the 11 blocks a charge of £1,100 was reasonably incurred and payable through the service charges.

(L) Item 49(i) complaint about pets.

(i) Mr. McElroy explained that Canonbury treat breaches of covenant as outside normal management and a legal issue. There was a need to investigate by sending letters. This involved writing to all concerned and identifying the flat owners. Canonbury wrote 6 letters, followed up with emails and telephone calls. It might involve looking at the particular lease and a legal notice to remove the pet. He did not know what had happened to the other 5. There was no court action. If the matter had progressed to court the fees would have been much larger (about £3,000 to £4,000 per issue). The fees had not been recharged to lessees and he did not think they could be recharged.

(ii) The Tribunal found that the charges of £323.30 were reasonably incurred and are payable through the service charges.

(M) Item 49(j) charge for quarterly domestic assistance.

As item 49(b) above, this was a charge for the rest of the year. In accordance with the RICS Code, there should be in place a contact system for out of hours

emergencies. This is a way of dealing with that requirement. The charge of £462 was reasonably incurred and is payable through the service charges.

(N) Item 49(k) charge for notice of pet admission.

This was tenant specific and should have been charged to the lessee. The charges were not reasonably incurred and are not payable through the service charges.

(O) Item 49 (l) bill from solicitor re legal action against flat 72.

(i) Mr. McElroy did not know if this had been recharged but it might not have been as the account was not settled.

(ii) This charge was tenant specific and should have been charged to the lessee. The charge was not reasonably incurred and is not payable through the service charges.

21. Year 2011/2012

(A) Item 50 cheque payment surcharge.

As in the case of items 17 and 18 above, if any such charges are made at all and are payable, they should be charged to the lessees making payment by cheque, not included in the service charges. In the absence of any other evidence, the position under the RICS Code that such charges be included in the managing agents' fee should apply. These cheque payment surcharges are not payable through the service charges.

(B) Item 54 charge where a lessee has not kept to the terms of a payment plan.

(i) Mr. McElroy accepted that these charges would go back to the service charges and not be recharged; part of the systemic approach.

(ii) These charges were tenant specific and should have been charged to the lessees. The charge was not reasonably incurred and is not payable through the service charges.

(C) Item 58 Land Registry searches.

As in the case of item 35, it was agreed that these charges had not been treated as tenant specific and had been included in the service charges because Canonbury had deemed it reasonable to charge such charges to the service charges. It was right to obtain information from the Land Registry and right to pay the charges from the service charges initially, as the money to pay the charges had to come from somewhere. However, under the leases such charges are recoverable from the individual lessees and Canonbury should have tried to recover them but because of the policy of Canonbury not to seek to recover in these cases the charges were unreasonably incurred and are not payable through the service charges.

(D) Item 59 obtaining interpretations of clauses in lease to take legal recovery action.

(i) Miss Maidman believes that invoice 132727 should read 1327276

(ii) As in the case of items 37 and 38 above, it was right to pay for obtaining interpretation of leases from the service charges initially as the money had to come from somewhere but under the leases the charges were recoverable from individual lessees and Canonbury should have tried to recover them. However, because of Canonbury's policy not to seek to recover in these cases the charges were unreasonably incurred and not payable through the service charges.

(E) Item 61 court fees.

As in the case of other tenant specific items, it was right to pay the court fees from the service charges initially as the money had to come from somewhere but Canonbury should have tried to recover them from the individual lessees concerned. However, because of Canonbury's policy not to seek to recover in these cases the charges were unreasonably incurred and not payable through the service charges.

(F) Item 62 charges in relation to obtaining default judgements.

As in the case of other tenant specific items, it was right to pay the fees relating to obtaining default judgements from the service charges initially as the money had to come from somewhere but Canonbury should have tried to recover them from the individual lessees concerned. However, because of Canonbury's policy not to seek to recover in these cases the charges were unreasonably incurred and not payable through the service charges.

(G) Item 63 charges for accounts.

(i) Mr. McElroy explained that there were insufficient funds to undertake an audit and that is why the subject property is in the trouble it is in now. He did not know if the costs were recoverable under the leases but requested the charges from the Company. It was Canonbury's charge for producing a certificate of income and expenditure and had been instructed to charge to the service charge account. Canonbury did as they were told but Mr. McElroy could not produce letters of instruction from the directors of the Company.

(ii) The Tribunal was not satisfied that the leases provided for such charges to be claimed from the lessees because the accountants needed to be independent and the accounts were prepared by Canonbury. Consequently the Tribunal found that these charges were not reasonably incurred and are not payable through the service charges.

(H) Item 64 quarterly domestic assistance.

As items 49(b) and (j) above, in accordance with the RICS Code, there should be in place a contact system for out of hours emergencies. This is a way of dealing with that requirement. The charge of £1,871.10 was reasonably incurred and is payable through the service charges.

(I) Item 65 charges for two annual detailed property inspections.

(i) At first sight, charging for 2 annual property inspections in one year appeared to be incorrect but the Tribunal accepted that one was for the following year and so it was in effect one inspection per year.

(ii) The charges for the inspections were: £3,104.19 on 20th April 2011 (invoice 1318022) and £3,259.40 on 27th February 2012 (invoice 1332813) and were challenged on the basis that they were excessive as in each case it was just a matter of updating the original report.

(iii) The Tribunal found that having had the first inspection, the charge for which had been allowed, the charges for these 2 inspections were excessive for what was in effect an update of the original report. We could not accept that it would take more than one day to carry out each inspection, including any follow up, and that a total of £1,000 for each inspection would be reasonable. Therefore the Tribunal found that a total of £2,000 for these inspections was reasonably incurred and is payable through the service charges.

(J) Item 66 charges in relation to Leasehold Valuation Tribunal proceedings.

This concerns the first set of Leasehold Valuation Tribunal proceedings in respect of which an order had been made under Section 20C of the 1985 Act. Consequently, these charges are not recoverable through the service charges.

(K) Item 68 contract to perform intercom maintenance
Item 69 access control maintenance
Item 70 lighting maintenance
Item 71 emergency lighting maintenance
Item 72 electrical maintenance contract.

(i) Mr. McElroy stated that the intercom is a panel on the door and there is a handset in each flat and that the access control system is a keypad access to the buildings. He also stated that there were irresolvable problems with the intercom system because it had become obsolete. Parts were needed and those obtainable were not necessarily compatible with the existing equipment. Some keypads had more buttons than were needed and the electrician had harvested them and used them where possible to make the system continue to work. Mr. McElroy referred to the lighting maintenance contract at item 47 above and stated that the external lighting had not been covered by the first contracts. Also that the sum of £1,291.66 per month for the electrical lighting maintenance contract was just a change from 6 monthly to monthly payments and that the total for the year was no more than it should be. Invoices in the sum of over £22,000 in accordance with a lighting maintenance contract were referred to. Although lighting was stated on the invoices, Mr. McElroy thought the charge may be for more than lighting. He was given the

opportunity to make enquiries by telephone but was unable to assist further other than to say that the charges changed from monthly to biannual in October.

(ii) No satisfactory explanation was provided for charging £29,849.28 when the contract provided for £15,500.

(iii) The Tribunal found that items 68 to 72 inclusive should all be covered by the contract for maintenance at a cost of £15,500 per annum and that under the circumstances £15,500 was reasonably incurred and is payable through the service charges.

(L) Item 73 banking fees £4,032.00.

(i) Mr. McElroy had no evidence of charges by the bank. He stated that it came back to a cheap management fee and so extra charges were needed. The evidence cannot be seen any longer as records of this are not on the legacy website. They were not just bank charges but were part of the management fee structure.

(ii) There was no evidence to substantiate these fees. Apparently, the fees had been calculated as 112 units x £15 per unit +VAT = £2016 x 2 = £4,032 for 2 years. In the absence of the management agreement Canonbury were unable to prove the expenditure or that it could be charged to the Company. Consequently, the Tribunal was not satisfied that the fees were reasonably incurred and they are not payable through the service charges.

(M) Item 75 (a) arrangement fee flat 80.

(i) In the respondent's statement of case it is stated that this charge relates to dealing with the various acts required for recovery against the relevant flat including a Leasehold Valuation Tribunal application by that party and attendance to hearings as necessary. Mr. McElroy accepted that it should be charged to the lessee of that flat and that there is a possibility of doing that.

(ii) The Tribunal found that this fee, if payable, should be paid by the individual lessee and not be recoverable through the service charges.

(N) Item 75 (b) receiving a defence form from Flat 110.

(i) In the respondent's statement of case it is stated that this charge relates to dealing with the defence to the action against the lessee of Flat 110 and attendance at the hearing as necessary. It had not been recovered from the lessee as Canonbury could not obtain the necessary evidence from the previous agent in time for the first hearing and had still not been recovered from the lessee.

(ii) The Tribunal found that this fee, if payable, should be paid by the individual lessee and not be recoverable through the service charges.

(O) Item 75 (i) charges in relation to a service charge dispute.

(i) In the respondent's statement of case it is stated that these charges relate to dealing with the various acts required for recovery against the relevant flat including a Leasehold Valuation Tribunal application by that party and attendance to hearings as necessary.

(ii) The Tribunal found that these charges, if payable, should be paid by the individual lessee and not be recoverable through the service charges.

(P) Item 75 (j) reading Tribunal Chairman's directions this case.

An application was made for an order under Section 20C of the 1985 Act and as the Tribunal has made such an order this charge cannot be claimed through the service charges.

(Q) Item 75 (k) emergency lighting.

The Tribunal accepted that this charge was in respect of a new installation of emergency lighting and did not come within the maintenance contract. The charge was reasonably incurred and is payable through the service charges.

(R) Item 76 overspend.

(i) An overspend of £424.07 levied 1st December 2012 does not appear in the audited accounts. Mr. McElroy stated that it would not be shown in the accounts as an income item so at the time of producing the accounts the overspend would not be included. The overspend was raised before the accounts were produced and was calculated and charged. Canonbury base their accounts on cash accounting but the audited accounts are on an accruals basis and there are likely to be discrepancies. The bottom line overspend forms part of the income of the subject property and the audited accounts reveal the actual expenditure of the subject property. Because the overspend is levied based on the cash basis and the audited accounts are on an accruals basis, depending on which is used going forward, the new agent may need to apply contra records to adjust the accounts accordingly.

(ii) The Tribunal found that the overspend was not recoverable as it was billed before the certified accounts were produced.

22. Year 2012/2013

(A) Item 85 Land Registry title searches.

As in the case of items 35 and 58, it was agreed that these charges had not been treated as tenant specific and had been included in the service charges because Canonbury had deemed it reasonable to charge such charges to the service charges. It was right to obtain information from the Land Registry and right to pay the charges from the service charges initially, as the money to pay the charges had to come from somewhere. However, under the leases such charges are recoverable from the individual lessees and Canonbury should have tried to recover them but because of the policy of Canonbury not to seek

to recover in these cases the charges were unreasonably incurred and are not payable through the service charges.

(B) Item 89 quarterly domestic assistance.

As items 49(b), 49(j) and 64 above, in accordance with the RICS Code, there should be in place a contact system for out of hours emergencies. This is a way of dealing with that requirement. The charge of £2,425.50 was reasonably incurred and is payable through the service charges.

(C) Item 91 charges in respect of a shed at the rear of the block.

(i) This was challenged on the basis that the charge was excessive for the work done.

(ii) In the respondent's statement of case it was stated that a shed had been broken into and lessees were using it to store personal items. Work was undertaken to ascertain the ownership of the said items and remove them when no-one owned up, to report the matter to the police and raise an insurance claim and to fix the lock and install an additional combination lock to help deter future break-ins. Mr. McElroy stated that the shed had been broken into repeatedly and although there was vandalism cover there was an insurance excess. He did not know if an insurance claim had been made. The Tribunal noted that there were no insurance refunds shown in the accounts for that year. That did not surprise Mr. McElroy as he thought there may be a £500 excess. However it was found that the excess was £250. Mr. McElroy's further comment was that these were not necessarily something Canonbury would claim for or be able to claim for and that these were management charges.

(iii) The Tribunal found that as there was vandalism cover with an excess of £250, then had there been a claim it was just the excess which would have been charged to the service charges. Only the sum of £250 was reasonably incurred and is payable through the service charges.

(D) Item 93 contract for intercom maintenance
Item 94 maintaining access control
Item 95 performing lighting maintenance
Item 96 £5,880 for performing emergency lighting maintenance as per the contract
Item 97 is the all inclusive contract.

(i) Ms Caiels had calculated that for items 93 to 96 inclusive, the charges were £19,992 and Miss Maidman stated that, in contrast, in the last 6 months only £287 had been spent for the 11 blocks.

(ii) As in the case of items 68 to 72 inclusive above, all these items should be covered by the all inclusive contract and they should come within the £15,500 maintenance contract charge. Item 97 is a monthly charge. £1,291.66 x 12 = £15,500.

(E) Item 99 (a) charges in relation to a court case against the lessee of flat 110.

(i) Mr. McElroy stated that this was a continuation of earlier charges in relation to the lessee of flat 110. The costs had not yet been recovered but he considered that they should be. However, he did not know the outcome of the court case.

(ii) The Tribunal found that these charges, if payable, should be paid by the individual lessee and not be recoverable through the service charges.

(F) Item 99 (b) arrears recovery in relation to a flat
Item 99 (c) defence received from Flat 80
Item 99 (d) court case Flat 110.

(i) Mr. McElroy considered that these charges should be paid by the individual lessees at the end of the judicial process.

(ii) The Tribunal found that these charges, if payable, should be paid by the individual lessees and not be recoverable through the service charges.

(G) Item 99(f) £368.30 added to service charge as a result of this application.

An application was made for an order under Section 20C of the 1985 Act and as the Tribunal has made such an order this charge cannot be claimed through the service charges.

(H) Item 99 (g) recovery of arrears flat 80
Item 99 (h) defence filed Flat 80
Item 99 (i) in relation to court case Flat 110
Item 99 (j) in relation to court case Flat 110
Item 99 (k) receiving defence from Flat 80.

The Tribunal found that these charges, if payable, should be paid by the individual lessees and not be recoverable through the service charges.

(I) Item 99 (m) leaking overflows £2,737.64.

(i) Mr. McElroy explained that there were severely leaking overflows from a number of flats causing saturation of brickwork, damp in flats and unnecessary consumption of water. Where there is a tap leaking continuously in one flat it can lead to £900 of water being consumed. Here there were a large number. There was a requirement to find out which flats had leaking overflows. This was done and Canonbury wrote to the lessees of those flats. It was necessary to review the situation, to look at the leases and see which clauses apply that required the lessees to cure the leaks and to try and cause the individuals to bring about those changes. In addition Canonbury did work with Thames Water to renegotiate the water bill for the block. Canonbury's charges were for rectifying the issues and obtaining the best terms in respect of the water bill. As a result of negotiation the annual cost for water was reduced considerably. The difficulties were: finding out if the leases allowed for recovery of costs for breach of the lease, attributing costs and then dealing

with lessees who would say that it was not their overflow which was leaking. The extra work could cost the Company more than to pay these charges.

(ii) The Tribunal found that, on the evidence from Mr. McElroy, Canonbury had identified which flats had leaking overflows and therefore the costs should have been claimed from the lessees concerned. These charges, if payable, should be paid by the individual lessees and not be recoverable through the service charges.

(J) Item 99(n) £306.64 claimed in relation to a Leasehold Valuation Tribunal application.

In the particular case (CHI/29UD/LSC/2012/0106) an order under Section 20C of the 1985 Act had been made and therefore these charges were not payable through the service charges.

(K) Item 99 (o) arrears recovery flat 80.

The Tribunal found that these charges, if payable, should be paid by the individual lessee and not be recoverable through the service charges.

(L) Item 99(p) £1,111.56 claimed in relation to a Leasehold Valuation Tribunal application.

In the particular case (CHI/29UD/LSC/2012/0106) an order under Section 20C of the 1985 Act had been made and therefore these charges were not payable through the service charges.

(M) Item 99 (q) recovery of arrears Flat 80.

(i) Miss Maidman stated that proceedings in respect of Flats 80 and 110 had been struck out. Canonbury appointed solicitors and asked the solicitors to reinstate the proceedings but because Canonbury failed to give instructions during the last quarter of management, the proceedings were again struck out.

(ii) Mr. McElroy's explanation was that a position had been reached where they could not get anywhere and did not have funds.

(iii) It seemed unlikely that these charges could now be recovered from the lessee concerned but they were not reasonably incurred and are not recoverable through the service charges.

(N) Item 99 (r) £394.96 claimed in relation to a Leasehold Valuation Tribunal application.

In the particular case (CHI/29UD/LSC/2012/0106) an order under Section 20C of the 1985 Act had been made and therefore these charges were not payable through the service charges.

(O) Item 99 (s) £2,016 claimed as banking charges.

As in the case of Item 73 above, the Tribunal was not satisfied that the charges were reasonably incurred and they are not payable through the service charges.

(P) Item 99 (t) £1,719 claimed as a result of a pipe leaking in a garden.

This was an extraordinary situation. Canonbury had to deal with it and obtained a refund from Thames Water for the benefit of the lessees. The charge was reasonably incurred and is payable through the service charges.

(Q) Item 99 (u) arrears recovery.

Again, in the particular case (CHI/29UD/LSC/2012/0106) an order under Section 20C of the 1985 Act had been made and therefore these charges were not payable through the service charges.

(R) Item 99(v) arrears recovery flat 80.

The Tribunal found that these charges, if payable, should be paid by the individual lessee and not be recoverable through the service charges.

(S) Item 99 (w) detailed property inspection.

As with item 65 above, the Tribunal found that £1,000 for this inspection would be reasonable. Therefore £1,000 for this item was reasonably incurred and is payable through the service charges.

(T) Item 99 (x) £995.28 claimed for damage to walls.

(i) Ms Caiels referred to one of the photographs produced which showed damage to a wall in her block which appeared to have been filled just by using white polyfilla or something similar and not finished properly. The wall had been in the same state for ages and the walls near Nos. 38, 39, 41 and 42 still looked to be in the same state.

(ii) Mr. McElroy stated that the work was preparatory to redecorating and to prevent further damage and that there was a quarterly schedule for redecoration. Complaints had been received and Mr. Senior had given instructions to deal with one block per quarter to spread the cost. This would mean that it would take almost 3 years to deal with all the blocks. Miss Maidman queried whether Mr. Senior was still a director at that time. Mr. McElroy did not know when the work was authorised. Painters were paid £200 per day and all the work was done on a fixed rate. There had been one occasion when an invoice was provided in error charging for a block which had not been completed. There were 42 locations where plastic corner pieces were fitted. No other quotes were obtained. The management contract was overseen by Mr. Senior. It may not have been the correct way to do it but it was unlikely that a lower quote would have been obtained. Canonbury present the cost to the directors and they can authorise or get other quotes.

(iii) The Tribunal was satisfied that the damage had to be dealt with, that the cost was reasonably incurred and is payable through the service charges.

(U) Item 99 (y) £2,808 claimed for internal and external decoration.

There was a lack of evidence of external decoration to support the sum claimed. Submissions were made as to internal decoration. The Tribunal found that the sum claimed was excessive and using its knowledge and experience determined that a charge of £500 for labour and £100 for materials was justified for the amount of work seen to have been undertaken. Therefore the sum of £600 was reasonably incurred and is payable through the service charges.

(V) Item 99 (z) a charge of £490 for external lighting maintenance.

The Tribunal found that this work should have been covered by the maintenance contract. Therefore this additional charge was not reasonably incurred and is not payable through the service charges.

(W) Item 99 (zi) pest control as per contract.

This was something which had to be dealt with and was a reasonable sum, reasonably incurred. The sum is payable through the service charges.

(X) Item 100 Overspend of £325.45 levied by Canonbury on 1st August 2013.

This sum does not appear in the audited accounts and as with Item 76 is not recoverable through the service charges.

23. There is before us an application for an order under Section 20C of the 1985 Act. We find that it is just and equitable in the circumstances to make such an order because the Applicants were justified in bringing these proceedings to clarify the position and were successful in respect of many of the items challenged. We therefore make an order that all or any of the costs incurred or to be incurred by the Company in connection with 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 Applicants.

Appeals

24. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

25. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

26. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-

day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

27. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)