

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0062/03/016

In the Matter of Flat 30 , Newlands Court , Station Road , Llanishen , Cardiff , CF14 5HU

In the Matter of an Application under section 27(A) and 20(C) of the Landlord and Tenant Act 1985

APPLICANT Mr Henry James Oliver

RESPONDENT Wales and West Housing Association Limited

TRIBUNAL Andrew Grant - Chairman  
Kerry Watkins - Surveyor  
Carole Calvin – Thomas – Lay member

Upon hearing Mr Oliver in person and Ms D Evans, solicitor, Ms Davies, Mr Halloren, Mrs Hart and Mr Gough for the Respondent.

Decision

Introduction

1. This is an application made by Mr Henry James Oliver. Mr Oliver is the leasehold owner of the property known as and situate at Flat 30, Newlands Court, Station Road, Llanishen, Cardiff, CF14 5HU (“the property”).
2. On the 7<sup>th</sup> March 2016 Mr Oliver submitted an application to the Leasehold Valuation Tribunal challenging the validity of various sums paid by way of service charge for the years 2012/2013 , 2013/2014 and 2014/2015 in respect of the property.
3. The Tribunal gave directions on the 21<sup>st</sup> March 2016 and a pre trial review was held on the 12<sup>th</sup> May 2016.
4. The final hearing was held on the 28<sup>th</sup> June 2016 at The Residential Property Tribunal Office, Southgate House, Wood Street, Cardiff, CF10 1EW.

5. Prior to the hearing the Tribunal inspected the property.

### The Inspection

6. Newlands Court is a substantial detached property constructed approximately 16 years ago. It occupies a slightly sloping plot of land fronting Station Road in Llanishen, Cardiff. It is situated in an area of larger older style properties on the outskirts of Llanishen village.
7. The building itself appears to have been constructed for use as a purpose built sheltered accommodation complex and comprises 36 self contained flats and associated rooms. 35 of which are privately owned.
8. There are two distinct sections to the building: a four storey (ground to third floor) front section and a 2/3 storey (ground to second floor) rear section, which are connected together by corridors, reception area and a communal room. The building forms a "T" shape on a plan view.
9. The front section of the building has primarily brick walls, with projecting bays to the front elevation. These have vertical substitute slate hanging between the window openings. The roof covering is of mansard design, with a simple pitched top section and sloping mansard section which have a covering of substitute slate.
10. Windows and doors are of part PVCu double glazed units and part timber single glazed. Timber windows are also set in to the mansard section of the roof.
11. The rear section of the building has two stories to the right hand side and three stories to the left (as viewed from the front of the building)The roof is pitched design with a mansard section to the left hand side and covered in substitute slate.
12. The elevations are primarily facing brickwork with the windows and doors being similar to those of the front section of the building.
13. The ' link ' section between the two has a similar simple pitched roof as detailed above, with a vertical slate hanging elevation interspersed with fixed glazing, entrance doors and windows.
14. Access to the site is via an entrance driveway off Station Road where there is a visitors' car park situated at the front of the site. The driveway runs along the right hand side of the property (as viewed from the front) to the rear of the building where there is a residents' car park and a large lawned area to the rear of the car park. There are also various shrubs and flower beds together with large trees within the site.

## The Lease

15. Mr Oliver occupies the property pursuant to the terms of a lease made between him and Wales and West Housing Association Limited which is dated the 12<sup>th</sup> December 2012 (“the lease”).
16. Clause 1 of the lease states, amongst other things, that the tenant shall pay “during *the said term monthly in advance a service charge (hereinafter referred to as “the service charge”)* payable to the landlord which charge shall be payable in respect of the matters referred to in the First Schedule hereto”.
17. Pursuant to Clause 4.1 of the lease Mr Oliver agreed “to *pay the service charge in the manner and on the dates herein mentioned and in accordance with the provisions of the First Schedule hereto*”.
18. The First Schedule of the lease sets out at Clause 2 those items of expenditure incurred by the Landlord which will form part of the service charge to be recovered from the tenants and they are -
  - (a) *the cost of the wardens salary and emoluments , provision of accommodation for the warden of Newlands Court and all other costs in connection with the provision of the warden service.*
  - (b) *The cost and expense of maintenance of the structure exterior and common parts of the property and reasonable provision for a reserve against expenditure on maintenance and repairs (and replacements)*
  - (c) *The expense of lighting cleaning and heating the areas used in common by the tenant and other tenants and the landlord*
  - (d) *The cost of maintaining and repairing (and of making provision for the replacement of) the lifts and other Landlord plant and equipment*
  - (e) *The rates taxes and other outgoings (including insurance of risks other than structure and contents) payable upon the premises not separately occupied by the Tenant*
  - (f) *The expense of insurance in accordance with the provision hereof and of insurance of the parts used in common and such contents as are for use in common by all tenants*
  - (g) *Auditors fees*
  - (h) *The cost of management which shall not exceed the sheltered management allowance permitted from time to time by the Department of the Environment*

## The Hearing

### Preliminary matter

19. At the start of the hearing the respondent handed to the Tribunal a letter addressed to Mr Oliver dated the 15<sup>th</sup> June 2015 to which was attached a document entitled "Administration charges – Summary of tenants' rights and obligations".
20. The Respondent stated that the document was being submitted in response to a question raised by the Tribunal at the pre trial review on the 12<sup>th</sup> May 2016.
21. At the hearing on the 12<sup>th</sup> May 2016 the Tribunal asked the Respondent if, in respect of the relevant periods, it had served notice pursuant to section 21B of the Landlord and Tenant Act 1985 ("the act") at the same time as sending the service charge demand. At the time the respondent said that such a notice had not been served.
22. S21B (1) of the act states that "*a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*"
23. The Respondent submitted this letter as evidence of compliance with s21B (1) of the act. They said that such a notice accompanied the service charge demands which were sent to the tenants each year. The letter was shown to Mr Oliver and he confirmed receipt of the letter and confirmed that similar notices were sent each year by the Landlord.
24. Having considered the letter and the attachment the Tribunal considers that it is clear that the Respondent has failed to comply with s21B (1) of the act. The notice which accompanied the letter (and all such demands during the period in question) does not relate to service charges but only applies to administration charges. Accordingly, the Tribunal finds that in respect of the service charges demands in the period 2012 – 2015 the service charge demands are not valid and do not comply with s21B of the act.
25. However, in respect of the periods in question the sums challenged have all been paid by the Respondent.

### Service Charges

26. The directions order dated the 26<sup>th</sup> March 2016 directed that the parties prepare a Scott Schedule identifying the items in dispute and setting out each party's respective position on each item.
27. The Scott Schedule identified 34 items in dispute.

## 2012 Service Charge Demand

28. Item 1 – Protec invoice £516.00. The Applicant required an explanation as to what the charge related to. In the absence of an explanation he maintained the charge was unreasonable.
29. The Respondent referred the Tribunal to the invoice which was contained within the bundle. It was unable to provide any further explanation as to what the work related to.
30. It is clear from the narrative in the invoice that the work related to the fire alarm system and in particular the replacement of obsolete MCP'S. The Respondent was unable to explain what this referred to.
31. Whilst it was not helpful that the Respondent was unable to properly explain what had been done it was clear that work had been done to support the invoice. A breakdown of the time spent was included in the invoice. Given that the Applicant had not advanced any evidence as to why the charge was unreasonable the Tribunal find this charge reasonable.
32. Item 2 – Meter Cupboard adjustment - £640.80. Mr Oliver asserted that the works had been overcharged. He stated that the contractor had used plywood and in those circumstances he valued the job at no more than £150. He did not produce any alternative quotations but did explain that prior to retirement he worked as a qualified electrician and plumber for the retailer Laura Ashley thus had some insight into these matters.
33. The Respondent relied upon the submissions contained in the Scott Schedule and the invoice which was included in the bundle.
34. Having inspected the units in question and using its experience as a specialist Tribunal, the Tribunal was satisfied that the works carried out were appropriate and that the contractor had used appropriate fire resistant materials and not plywood as Mr Oliver had suggested. Accordingly the Tribunal finds that this charge is reasonable.
35. Item 3 – Chair and Wall repairs - £331.97. The Applicant suggested that the work was not carried out to an acceptable standard and in consequence the charge was too high and unreasonable. He said that it would have taken a competent contractor one morning to complete the work and again suggested a reasonable charge as being £150. The Respondent questioned the Applicant as to how recent his knowledge of pricing was and the Applicant stated that he left Laura Ashley in 1972. Thereafter he had maintained his own home before moving to Newlands Court in December 2012. The Respondent submitted that the Applicants knowledge of these matters was out of date and unreliable. They made no submissions upon the quality of the work and again referred to the response in the Scott Schedule.
36. Having seen the quality of work The Tribunal was satisfied that the standard of repair was poor. The invoice from the contractor also stated that it had fitted a

melamine coated dado rail but inspection revealed this to be incorrect. The dado rail was wooden.

37. In the circumstances the Tribunal preferred the evidence of the Applicant on this issue and agreed that a reasonable charge would be £150.

38. Accordingly, the 2012 service charge account is reduced by £181.97 (Item 3 of the Scott Schedule).

#### 2013 Service Charge Demand

39. Item 1 – Lift Safety barrier - £256.50. The Applicant produced a catalogue from a company known as “Screw fix”. He submitted that the barrier in question should cost no more than £60. He also submitted that it had been taken away by the contractor. The Respondent submitted that the barrier had been supplied by a company called “ThyssenKrupp” and remained on site.

40. During the inspection the Tribunal viewed the barrier which was in the lift room on site. Having considered the matter the Tribunal formed the view that the barrier referred to by the Applicant was different to that supplied by the Respondent and accordingly the Applicant was not comparing like with like. The invoice for the barrier was amongst the papers and accordingly the Tribunal find that the charge was reasonable.

41. Item 2 – Scaffolding works - £1475.49. The Applicant submitted that the tenants had been overcharged. He challenged the charge for the scaffolding and the charge for the Plywood Soffit boards. He submitted that a reasonable charge would be £800. The Respondent accepted that a mistake had been made by the contractor as regards the Scaffolding which resulted in the parties being charged too much. The correct charge for the scaffolding should have cost £806.40 which sum is inclusive of VAT.

42. As regards the Soffit boards the Respondent was unable to provide an invoice to support that charge. The Tribunal was concerned that all charges should be supported by appropriate invoices. In circumstances where no invoice was available to support the charge the Tribunal concluded that it would not allow the charge as to do so would be unreasonable.

43. Accordingly, this item was reduced to £806.40.

44. The service charge account for 2013 is thereby reduced by £669.09 (Item 2 of the Scott Schedule)

#### 2014 Service Charge Demand

45. Item 1 – Time delay switches - £100.20. The Applicant submitted that only one switch had been changed. Mrs Donna Hart, who is the scheme manager for the Respondent, gave evidence to the fact that 3 switches had been changed outside Flats numbered 16, 19 and 28.

46. The Tribunal preferred the evidence of Mrs Hart on this issue.
47. The Tribunal finds this charge to be reasonable.
48. Item 2 – Replacement Light Fitting - £114.60. The Applicant submitted that there should not be any charge as the work had not been carried out. He stated that only 1 florescent tube had been replaced and in those circumstances the charge was excessive. In his written evidence he relied upon the cost of a fluorescent tube as being much lower than that charged by the Respondent and in that regard he attached an extract of charges from a company called “ Thorn Lighting “. Mrs Hart gave evidence for the Respondent that the work had been completed as per the contractors invoice which appeared in the bundle.
49. The Tribunal noted that the invoice from Neil Farrant Limited did not just include a charge for the repair but also included a charge for tracing the problem as well. In the circumstances the Tribunal preferred the Respondent’s evidence on this point and finds the charge reasonable.
50. Item 3 – Replace switches and light fittings - £229.20. The Applicant submitted that the work had not been done. In those circumstances he submitted that the charge should be disallowed as being unreasonable. Mrs Hart gave evidence for the Respondent that she was aware that one switch had been fitted and that a light fitting had been installed although she was not aware of any switch being installed in the bin area.
51. The Tribunal had viewed the area in question and the switch situated in the bin area did not appear to be new. In the circumstances the Tribunal find that only one switch was fitted and not two. Accordingly the charge is reduced by one third and the Tribunal finds that a reasonable charge is £152.81.
52. Item 4 – Roof Leak - £1656.00. The Applicant submitted that the charge was excessive and unreasonable. In his written submissions the Applicant said that any work which was done was completed in the time that it took the contractors to complete the erection of the scaffolding. He submitted that a reasonable cost for scaffolding was £550 thus materials and labour charges came to £1106.00.
53. The Respondent said that they could not confirm that the work was done but that the invoice was signed off by Verity Kempton. She is David Morgan’s assistant. David Morgan is responsible for authorising and checking the work at the property. Mr Morgan could not attend Tribunal as he was away from work due to illness.
54. Whilst the Tribunal noted Mr Oliver’s comments he had presented no alternative quotes for consideration. His evidence confirmed that he was an electrician and plumber by training. The Tribunal took the view that in the absence of firm evidence to the contrary the charge is reasonable.
55. Item 5 – Replace roof velux window - £1689.60 .The Applicant submitted that the charge was excessive and unreasonable. He submitted that a reasonable cost

would be £1000.00. However, he produced no independent evidence in support of that contention.

56. The Respondent relied upon the comments contained within the Scott Schedule and the invoice which it had received from the contractor. It made no further submissions on the point.
57. The Tribunal prefer the Respondent's evidence on this point and find that the charge is reasonable.
58. Item 6 – Replace roof velux window - £2146.31. The Applicant submitted that the cost was excessive and unreasonable. He submitted that the previous charge had been £1689.60 for the same works at number 36. He submitted that number 17 was situated at a lower level and should cost less.
59. The Respondent submitted that the cost was higher as Flat 17 was on the 3<sup>rd</sup> Floor of the property. However, this was incorrect. Flat 17 is situated at a lower level. The Tribunal noted a difference of £456.71 between the charges applied to Flat 36 and Flat 17. Although no detail was provided the difference in cost must have been the scaffolding required to work at the higher level. Accordingly the scaffolding charge is unreasonable and the Tribunal find that a reasonable charge for Flat 17 should have been £1689.60.
60. Accordingly, the Tribunal considers this item unreasonable. A reasonable charge is £1689.60 and the charge is reduced accordingly.
61. Item 7 Roof works - £1928.40. The Applicant asserts that the work was not done and thus the charge is unreasonable. The Respondent submitted that the work had been done and relied upon the evidence of Mr Halloren who confirmed that the work had been done. Mr Gough (for the Respondent) stated that where there were issues of structural movement (as was the case here) the Respondent would involve a structural engineer but he said that he was not aware of that being done in this instance. He said that Mr Morgan would have dealt with this issue but he was away from work ill.
62. The invoice in question was dated the same date as the invoice for item 6 which also relates to other work being carried out to number 17. Thus it seems logical that this work could have been carried out at the same time.
63. There is no evidence from the occupier of number 17 to confirm the point one way or the other.
64. In the circumstances the Tribunal concludes as a matter of fact that the work was done and finds the charge reasonable.
65. Item 8 – Electrical Test – £4974.25. In his written submissions the Applicant submitted that the tenants should have been consulted prior to this cost being incurred. At the hearing he expanded upon his submission by saying that the cost was unreasonable. He stated that in his view the work could have been carried



out by 1 qualified electrician assisted by 1 Trainee. He submitted that it should have taken no more than 2 days.

66. The Respondent referred to the copy of the invoice included in the bundle as evidence of what was carried out. The Respondent also submitted that the cost was reasonable. The Respondent submitted that the value of the works did not require a consultation to be held with the tenants.
67. The Tribunal agree that the sums in issue did not require a consultation under s20 of the Act to be carried out. A review of the invoice indicates that a large amount of work was undertaken by the contractor and we find the charge reasonable.
68. Item 9 – Ceiling Leak - £ 716.28. The Applicant challenged the reasonableness of this charge. He said that although workman attended to view the problem they did not carry out any work.
69. The respondents relied upon the reply contained in the Scott Schedule. By way of an e mail dated the 30<sup>th</sup> June 2016 they confirmed that the cost of labour was £359.17 and the cost of materials was £357.11. The Respondents stated that the work had been carried out by a company called Cambria. This company was associated with the Respondent Company.
70. The Tribunal noted that the only evidence of works was an undated e mail. The e mail displayed a completed value of “0.00” .There was no invoice to support the charge of £716.28 only a handwritten entry on the copy of the e mail. In the absence of a supporting invoice the Tribunal finds the charge unreasonable and reduces the sum payable to nil.
71. Item 10 – Guestroom flooring - £310.98. The Applicant requested a breakdown of the charge. By an e mail dated the 30<sup>th</sup> June 2016 the Respondent confirmed that the labour charge was £266.30 and materials cost £44.68.
72. The Tribunal noted that there was no invoice to support this charge. The Respondent relied upon an undated e mail which was included in the bundle. The e mail attributed a completed value of “0.00”.The sum of £310.98 was written on the document by hand. In the absence of any proper invoice the Tribunal finds the charge unreasonable and reduces the sum payable to nil.
73. Item 11 – Fire Signage - £ 3360.00. The Applicant submitted that the cost was excessive and unreasonable. He produced a quotation that he submitted had been provided to the Respondent which totalled £2032.00 exclusive of vat. He said that there had been an overcharge of £921.60.
74. The Respondent denied any element of overcharging. The Respondent stated that the quote obtained by the Applicant was not like for like as the Applicant’s quote omitted prices for items 1, 2, 2a and 5 of the quote provided to the Respondent. When added together the price charged was exactly the same as the quote that was originally provided to the Respondent.

75. The Tribunal accepts the Respondents submission on this point and determines the charge to be reasonable.
76. Item 12 – Laundry Fire Door - £222.77 and £49.55. The Respondent agreed to credit the sum of £49.55 to the service charge account for 2015. This was agreed by the Applicant and the remaining charge accepted.
77. Item 13 – Pathway concrete slab - £61.06. The Applicant submitted this charge unreasonable as it had not been carried out to an acceptable standard. He stated that the concrete slab had cracked 4 days following its fitting.
78. The Respondent relied upon the comments in the Scott Schedule.
79. The Tribunal requested a copy of the invoice and was informed that no invoice was available. The respondent sought to rely upon an undated e mail to evidence the work. The sum of £61.06 had been written on by hand. The Tribunal finds that in the absence of an invoice to support the charge the amount claimed is unreasonable. The charge is reduced to Nil.
80. Items 14, 15 and 16. In the case of each of these items the Respondent failed to produce an invoice in support of the charge. Accordingly, the Tribunal finds amount claimed to be unreasonable. The charge for each item is reduced to Nil.
81. Item 17 – Tumble Drier repairs - £90.00 and £144.00. The Applicant submitted that the charge of £90 was unreasonable. He submitted that the job was not carried out correctly the first time and this necessitated a further visit to rectify the problem. He submitted that the second visit should not have been necessary. He stated that on the first occasion the workman fitted the incorrect hose which was subsequently changed.
82. The respondent said that they had no evidence of what was fitted and when. It submitted that the contractor was experienced enough to carry out the job.
83. The Tribunal noted that the contractor held himself out on his notepaper as being able to deal with “domestic “appliances. However, the appliances in issue were commercial driers. The Tribunal preferred the Applicants submissions that the first job was not carried out properly and thus the charge of £ 96.00 was not reasonable. The Tribunal determined that the charge of £96 should be reduced to Nil.
84. The Service charge account for 2014 is thereby reduced by £2141.46 (Items 3, 6, 9, 10, 12 -17 of the Scott Schedule).

#### Miscellaneous

85. Item 1 GKR Emergency lighting upgrade - £9637.44. The Applicant submitted that the charge was excessive and as such was unreasonable. He stated that the lights did not need renewing. In his written evidence to the Tribunal he suggested that the work would have taken two electricians 5 days to complete but he did not

give any evidence as to what he maintained was the reasonable cost of such work.

86. The Respondents referred to the submissions which it made in the Scott schedule. It expanded upon this in evidence when it submitted that additional lights were fitted following a recommendation from The South Wales Fire and Rescue Service.
87. The Tribunal preferred the Respondents evidence on this point and find that the works were necessary and that the costs were reasonable.
88. Item 2 – GKR Stairwell sensors - £2277.74. The Applicant submitted that the cost was excessive and unreasonable. He submitted that 7 sensors had been replaced in total: 4 in the North Stairwell and 3 in the South Stairwell. He said that a reasonable cost would be £500.
89. In its written evidence the Respondent submitted that 8 sensors had been installed. The Respondent submitted that the sensors were far more sophisticated and of a higher specification than Mr Oliver suggested. They stated that the sensors were all interconnected with the lighting system. The Respondent further submitted that Mr Oliver had not produced any experts report or valuation to support his submissions.
90. The Tribunal are of the view that the Respondents evidence on this issue is to be preferred. The evidence indicates that the type of sensor required and the complexity of their fitting are not as straightforward as Mr Oliver suggests. For those reasons the Tribunal find that the charge is reasonable.
91. Item 3 – GKR – Communal Tube Lighting - £457.80 & £161.40. The Applicant submits that the costs are excessive and unreasonable. He submits that in total 5 tubes were replaced.
92. The Respondent's written submissions indicate that 48 tubes were replaced as part of a scheme of work to replace the communal lighting tubes and starters throughout the entire building. The Respondent indicated that as regards the charge for £161.40 there were 11 tubes replaced and not 5 as suggested by the Applicant. This latter point was confirmed by Mrs Hart in her evidence as the hearing.
93. The Tribunal find the charge to be reasonable. We prefer the Respondents evidence on this issue. Mrs Hart was a credible witness who gave straightforward evidence. She was also prepared to make concessions where appropriate which impressed the Tribunal. Whilst the Tribunal also considered Mr Oliver to be an honest witness we considered that his evidence on this issue was not as clear.
94. Item 4 – Stairwell Lighting - £ 281.70. The Applicant submitted that works to the stairwell lights were carried out by a company known as "Steve's Domestic's". He submitted that he has never been provided with a breakdown for the charge and accordingly the charge is unreasonable.

95. The Respondents denied that they had used Steve's Domestic to carry out the repair.
96. The Tribunal requested a copy of the relevant invoice for the work. The Respondent admitted that it did not have an invoice in respect of the work. It directed the Tribunal to an undated e mail which was marked with a handwritten note indicating a figure of £281.70. In the absence of an invoice in respect of the work the Tribunal considers the charge unreasonable. The charge is reduced to Nil.
97. Item 5 – Gas Boiler Servicing - £56.47. The Applicant submitted that the work unnecessary and in consequence unreasonable. He said that the Landlord charged £56.47 for servicing the boiler in a 1 bedroom flat and £66.41 for servicing a 2 bedroom flat even though each property had 1 boiler.
98. The Respondent stated that a gas maintenance agreement was in place. The service was not a boiler service but rather a safety check to enable the Landlord to discharge its statutory obligations. Mrs Evans submitted that the respondent did not rely upon the terms of the lease to claim payment but payment was claimed under statutory provisions.
99. The Tribunal is satisfied that this is not a cost that can be passed onto the tenants under the terms of the lease. It is not mentioned anywhere in the lease. Furthermore the Respondents explanation of how the cost is apportioned is again not supported by the terms of the lease. The lease makes no reference to apportionment in this way.
100. Furthermore the Tribunal is not satisfied that the tenant is responsible for this cost under any other legislation. The Respondent has not provided any evidence to support such a submission. The Tribunal finds this charge unreasonable.
101. Item 6 – Communal cleaning. The Applicant submitted that the costs charged for the provision of cleaning to the communal areas was excessive and unreasonable. He calculated that the hourly rate for the cleaner in 2012 was £21.80, in 2013 it was £21.69 and in 2014 it was £28.46. He said he had recently obtained a quote from Abbey Cleaning Service Limited indicating an hourly rate of £12.50 per hour.
102. The Respondent gave evidence that the contracts in question were lump sum contracts and as such were not calculated by reference to hourly rates. They stated that the cleaners had recently been changed following an appropriate consultation with the tenants. The resulting quotes which were obtained from that exercise showed that the previous figures charged were reasonable.
103. The Tribunal found that because the contracts were lump sum contracts it would be incorrect to have regard to hourly rates. The quotes provided from those companies that were invited to tender were all (save one – lady bird cleaning services) more expensive than the charges that had been applied by the landlord. It was noted that Ladybird Cleaning services had now been appointed as the new cleaning company for the property.

104. Accordingly, for the reasons given above the Tribunal finds the charges reasonable.
105. Item 7 – Grounds Maintenance. The Applicant submitted that the increase of £220 in the year 2015 was unreasonable. He stated that an explanation of the increase was sought but was never received.
106. The Respondent confirmed that the correct price for gardening was £3168 per annum. The estimated figure quoted by the Respondent in the 2015 Service Charge Summary was an error and should have been £3168. The Respondent confirmed that this error would be rectified with an appropriate credit.
107. Item 8 – Laundry Room boiler - £1967.69. The Respondents were unable to produce any invoice for these works. Accordingly the Tribunal find the charge unreasonable and reduce the charge to Nil.
108. Item 9 - One call Wales roof repair - £708.00. The Respondents confirmed that this charge would be withdrawn.
109. Item 10 – Fire Alarm Testing - £400. The Applicant submitted that it was unreasonable to use two people to carry out this test at a cost of £400 per annum.
110. In its evidence the Respondent confirmed that only one call point was tested each week. The respondent also stated in evidence that the second person also carried out other checks whilst at site as outlined in the Scott Schedule.
111. The Tribunal found that it was unreasonable to use two people to carry out this exercise. Had all of the call points been tested weekly then the charge may have been reasonable. However, the Respondent confirmed that only one point was tested in any period of 7 days. The Tribunal also found that the other jobs performed by the second person could be carried out by the warden whilst on site and such tasks would fall within the current sums paid for warden services. This item was reduced to Nil.
112. Item 11 – The Tribunal determined that it did not have jurisdiction to deal with this item.
113. Item 12 – Gutter cleaning - £900.00 per Annum. The Applicant submitted that the gutters at second and third floor levels have never been cleaned since 2012.
114. The Respondent confirmed in evidence that the gutters were cleaned every other month and this included all guttering. On behalf of the Respondent Ms Davies of the Respondent Company confirmed in evidence that she had spoken with the contractor and they had confirmed that the works to the second and third gutters were regularly carried out.
115. The burden of proof in respect of this matter lies with Mr Oliver. He has not produced any report from any third party to support his contention that the

guttering has not been regularly cleared for 3 years. He refers to two incidents in 2012 where the guttering had to be cleared and for which a separate charge was applied and a single incident in each of the years 2013 and 2014 for which again a separate charge was applied. The Tribunal are of the view that the incidents of blockage would be more frequent if the gutters had not been cleared regularly as the Applicant submits. This is particularly the case given that the property is situated in the vicinity of a large number of mature trees that would shed their leaves in autumn.

116. Accordingly the Tribunal find as a matter of fact that the gutters at second and third floor level have been regularly cleaned. The Tribunal find the charge reasonable.

117. The charges for the year 2015 are to be reduced by £3633.86 (as per items 4, 5,7,8,9 and 10 of the Scott Schedule).

### Summary

118. The Service charge for 2012 is reduced by £181.97.

119. The Service charge for 2013 is reduced by £669.09

120. The service charge for 2014 is reduced by £ 2141.46

121. The service charge for 2015 is reduced by £ 3633.86

122. Total value of reduction for which credit is to be given £6626.38

### Other Matters

123. Mr Oliver also made an application under s20C of the Act that the costs of these proceedings should not be added to the service charge account.

124. As regards this issue the Tribunal may make such order as is just and equitable in the circumstances.

125. The Tribunal noted that whilst Mr Oliver has been successful on several issues he has been unsuccessful in challenging the greater number of his complaints.

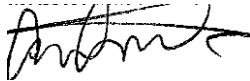
126. However, during the hearing the evidence showed that on a number of occasions the Respondents failed to adequately deal with Mr Oliver's complaints over a substantial period of time.

127. The evidence led the Tribunal to form the view that the Respondent's sometimes failed to investigate the Applicants complaints thoroughly or in some cases at all. Mr Oliver had legitimate concerns and they stemmed from a lack of information or explanation being provided by the Respondent to Mr Oliver's enquiries. Had the Respondent responded more promptly (and in some cases at

all) with a proper explanation and response to Mr Oliver's concerns the issues that the Tribunal had to decide may have been greatly reduced.

128. In those circumstances the Tribunal makes an order Pursuant to s20C that the costs of these proceedings are not to be added to the service charge account.

Dated this 19th day of July 2016

A handwritten signature in black ink, appearing to read 'Andrew Grant', written over a horizontal dashed line.

Andrew Grant  
Chairman