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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER SECTIONS 20C AND 27A OF THE LANDLORD  
AND TENANT ACT 1985**

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**Reference number:** LON/00AW/LSC/2005/0191

**Property:** 131 Abbotbury Road, London W14 8EP

**Applicant:** Ms M Sofaer (Tenant)

**Respondent:** Ilchester Properties Ltd (Landlord)

**Represented by:** Kinleigh Folkard & Hayward, Managing Agents

**Tribunal:** Mr A Andrew LLb

**Applications Dated:** 6 July 2005

**Directions:** 15 July 2005 and 3 January 2006

**Determination:** 26 January 2006

**Decision:** 17 February 2006

### **Decision**

1. I determined that no building's insurance premium was payable by the Applicant to the Respondent by way of service charge in respect of the period from 25 December 2002 to 24 June 2003.
2. I ordered that the Respondent should reimburse the Applicant with her fees of £50 incurred in making her application.
3. I ordered that the Respondent should not be entitled to recover any costs incurred in these proceedings through the service charge provisions of the Applicant's lease.
4. I made no order on the Applicant's application for costs.

### **Application**

5. The Applicant applied for a determination of her liability to pay a service charge under Section 27A of the Act. She also applied for an order limiting the recovery of the Respondent's costs incurred in these proceedings through the service charge, under Section 20C of the Act. The Directions issued on 15 July 2005 authorised me to consider ordering the Respondent to reimburse the Applicant with her fees of £50 incurred in making her application. Finally, in her Statement of Case, the Applicant sought recovery of her costs, which she put at £250.00.
6. The tribunal directed, on 15 July 2005 that the application should be dealt with entirely on the basis of written submissions and without a hearing unless either party requested a hearing: no such request was received and it was apparent from the submissions received that both parties were content for the matter to proceed without an oral hearing.

### **Issue in Dispute**

7. Under the terms of her lease the Applicant paid a proportion of the annual buildings insurance premium incurred by the Respondent as landlord. The Respondent, through its managing agents, sought to recover a due proportion of the premium for the insurance year commencing 25 December 2002. That proportion was £523.77. The Applicant said that she should not have to contribute towards the premium in respect of the period from 25 December 2002 to and including 24 June 2003 because during the period the Property had not been insured: the Respondent, through its managing agents, disagreed.
8. The lease under which the Applicant holds the Property was not put in issue by either party and I did not consider it save to satisfy myself that

a due proportion of the buildings insurance premium was recoverable under the terms of the lease, by way of service charge.

**Facts**

9. I first considered the papers in this matter on 3 January 2006 but I had some difficulty in establishing the facts because the documentation was incomplete. I requested both parties to provide additional documentation. In particular I requested the Respondent's managing agents to provide a copy of the buildings insurance policy for the year ending 24 December 2002 and to provide copies of all correspondence passing between the Respondent's brokers and the insurers relating to the renewal of the policy on 25 December 2002. I pointed out that failure to provide these documents could result in my drawing an adverse inference. Unfortunately the Respondent's managing agents were unable to provide a copy of the policy requested although they provided a copy of another policy document that did not appear to relate to the Property, not least because it specified a different insurance year. The Respondent's managing agents also failed to provide copies of the requested correspondence on the basis that the brokers were "having difficulty" in locating their file. I also requested the Applicant to provide receipted invoices in respect of the costs alleged to have been incurred by her but again the information was not forthcoming. Nevertheless on the basis of the documents provided I found the following relevant facts: -

- a. During the relevant period the Property was insured through Heath Lambert Ltd, Insurance Brokers. The insurance was placed with Axa Insurance. The insurance year ran from 25 December in each year.
- b. It follows from the above that the policy fell due for renewal on 25 December 2002. It was however apparent, from a fax from the managing agents dated 24 June 2003, that the brokers had failed to send out the renewal documentation. The error was not discovered until June 2003 when it was rectified. On 24 June 2003 the brokers issued a certificate of insurance confirming the period of cover as being from 25 December 2002 to 24 December 2003. The insurance premium was not paid to the broker until 7 April 2004. The brokers were unable to confirm when they paid the premium to Axa Insurance.

**Reasons for Decision**

10. From the above facts I concluded that the insurance on the Property would have lapsed, after a usual period of grace, following the expiry of the previous year's policy on 24 December 2002. The Respondent, through its managing agents, had produced no documentary evidence to suggest that cover would have been automatically continued by the insurers, other than their assertion to that effect.

11. All the documents upon which the managing agents relied (in asserting that the Property was covered from 25 December 2002) were dated on or after 25 June 2003. The Respondent had not produced a copy of the previous year's policy and there was no documentation before me to suggest that the insurers would have held cover indefinitely after the end of the previous insurance year.
12. Although the brokers had issued a certificate of insurance on 25 June 2003, to cover the insurance year from 25 December 2002, it was clear to me that the certificate was backdated. I had no doubt that if the Property had been damaged by an insured risk during the period from the expiration of the previous year's policy to 25 June 2003, the insurers would have been entitled to disclaim liability. The fact that they might have chosen not to disclaim liability, for commercial reasons, was neither here nor there. On the documents produced to me they would have had no obligation to accept liability. During that period the Property was at risk. Consequently any insurance premium subsequently paid by the Respondent, in respect of that period, had been unreasonably incurred and no service charge was payable in respect of it. The premium would have to be apportioned on a daily basis and the Applicant invoiced for the period from 25 June 2003 to 24 December 2003.
13. Turning to the Section 20C application the right to recover costs is a property right that should not lightly be disregarded. Section 20C however provides that a tribunal may "*make such order on the application as it considers just and equitable in the circumstances*". I considered that those words permitted me to take into account the conduct of the parties in deciding whether to make an order.
14. Having reviewed the correspondence passing between the Applicant and the Respondent's managing agents it was clear to me that the latter had been less than helpful in dealing with the former's complaint. Indeed they had dealt with the issue throughout, in what appeared to be a deliberately opaque manner. In such circumstances I concluded that it would be wholly unjust and inequitable if the Applicant were required to reimburse the Respondent, though the service charge, with any costs incurred by it in these proceedings. For similar reasons I considered it reasonable to order the Respondent to reimburse the Applicant with the fees incurred by her in making her applications to the Tribunal.
15. Turning to the Applicant's application for costs, the only jurisdiction, authorising me to make such an order, is to be found in Schedule 12 of the Commonhold and Leasehold Reform Act 2002. Although I had considerable sympathy with the Applicant's request I considered that the jurisdiction to order costs is limited to costs actually incurred by a party to the proceedings. That is it does not confer a jurisdiction to compensate one party for the time spent in the preparation of its case. The Applicant produced no invoices to substantiate the costs claimed

and in such circumstances I considered it inappropriate to make any order.

Chairman:  ..... (A J Andrew)

Date: 17 February 2006