

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/OOHN/LSC/2008/0121

REASONS

Application : Section 27A of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Landlord : Mr Samuel A Khan

Respondent/Leaseholders : Miss Lucy Cristofoli (85 Seabourne Road) and Mr Stephen Williams (85A Seabourne Road)

Building : 85 and 85A Seabourne Road, Bournemouth, BH5 2HF

Flats : The ground floor flat (85A Seabourne Road) and the first and second floor maisonette (85 Seabourne Road) in the Building

Date of Application : 4 November 2008

Date of Directions : 6 November 2008

Date of hearing : 19 December 2008

Venue : Royal Bath Hotel, Bath Road, Bournemouth

Appearances for Applicant/Landlord : Mr Khan

Appearances for Respondent/Leaseholders : Miss Cristofoli and Mr Williams

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr A J Mellery-Pratt FRICS, and Mr K Lyons FRICS

Date of Tribunal’s Reasons : 23 January 2009

Introduction

1. This application by the Applicant/Landlord comprises :
 - a. an application under Section 27A of the 1985 Act for the Tribunal to determine the payability of service charges
 - b. an application for variation of the ground rent payable under the leases of the Flats

Statutory Provisions

2. Section 19(1) of the 1985 Act provides as follows :

19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred, and*
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly*

Documents

3. The documents before the Tribunal are :
 - a. the Applicant/Landlord statement dated the 11 November 2008
 - b. the Respondent/Leaseholders' response dated the 7 December 2008
 - c. the Respondent/Leaseholders' bundle relating to 85 Seabourne Road
 - d. the Respondent/Leaseholders' bundle relating to 85A Seabourne Road
 - e. post-hearing undated submissions from the Applicant/Landlord and "addendum" dated the 14 January 2009
 - f. post-hearing submissions from the Respondent/Leaseholders dated the 14 January 2009

Inspection

4. The Tribunal inspected the Building on the morning of the hearing on the 19 December 2008. Also present were Miss Cristofoli and her father. Miss Cristofoli said that there was nothing in the interior of the Flats which was relevant to the issues before the Tribunal, and the Tribunal inspected only the exterior accordingly
5. The Building comprised a 3-storey mid-terrace building forming part of a parade of shops. The Building was brick-faced with a mansard roof incorporating an ornamental brick dormer on the front elevation. The ground floor flat appeared to have been formerly a shop. The windows were UPVC. There was a concrete front porch leading to separate front doors for 85 Seabourne Road and 85A Seabourne Road
6. Access to the rear of the Building was via a side road leading to a footpath, where the Building had a wooden fence and gate. There was a shingle path leading to 85A Seabourne Road, and to an external staircase leading to 85 Seabourne Road
7. The Building appeared to be in generally good decorative condition

The leases

8. The Respondent/Leaseholders' bundles contain copies of the leases of the Flats
9. For the purposes of these proceedings the material parts of the lease of 85 Seabourne Road dated the 21 October 1981 are as follows :

Clause 1

.....paying.....the yearly rent of £20 (which said rent shall double after each thirty-three year period throughout the demise.....and also paying by way of further or additional rent from time to time a sum.....equal to one half of the amount which the Lessors may expend in effecting or maintaining the insurance of the Building against loss or damage by fire and such other risks (if any) as the Lessors shall think fit as herein after mentioned

Clause 4 [Tenant's covenants]

(ii) contribute and pay one equal half part of the costs and expenses outgoings and matters mentioned in the Fourth Schedule hereto

Clause 5 [Lessors covenants]

(b)insure.....the Building against loss or damage by fire and such other risks (if any) as the Lessors shall think fit.....

(d)maintain repair decorate and renew :

(a) [main structure]

(b) [common pipes drains and cables]

(c) [boundary walls and fences]

(d) [decorate exterior at least once every 5 years]

Fourth schedule

Costs expenses outgoings and matters in respect of which the Lessee is to contribute

Paragraph 1

The expense of maintaining repairing decorating and renewing:

(a) [main structure]

(b) [common pipes drains and cables]

(c) [common entrances passages landings and staircases]

Paragraph 2

[The cost of cleaning and lighting common paths and stairs]

Paragraph 3

[The cost of decorating the exterior]

Paragraph 4

[Rates and outgoings]

Paragraph 5

The cost of insurance against third party risks in respect of the Building if such insurance shall in fact be taken out by the Lessors

Paragraph 6

[Expenses for communal refuse bins]

Paragraph 7

All other expenses (if any) incurred by the Lessors in and about the maintenance and proper and convenient management and running of the Building

Paragraph 8

The fees and disbursements paid to any managing agents appointed by the Lessors in respect of the Building provided that so long as the Lessors do not employ managing agents they shall be entitled to add the sum of 10% to any of the above items for administration

Paragraph 9

When any repairs redecorations or renewals are carried out by the Lessors the Lessors shall be entitled to charge as the expenses or costs thereof their normal charges (including profit) in respect of such works

10. For the purposes of these proceedings the material parts of the lease of 85A Seabourne Road dated the 30 January 1998 are as follows :

Clause 1 Particulars

1.2	<i>The Estate</i>	:	<i>[the Building]</i>
1.9	<i>The Service Charge</i>	:	<i>the contributions equal to the Tenant's Proportion of the expenditure described in sub-clause 7.1 and in the Third Schedule</i>
1.10	<i>The Tenant's Proportion</i>	:	<i>50% of the expenditure described in sub-clause 7.1 and in the Third Schedule</i>
1.12	<i>Initial Rent</i>	:	<i>£100</i>
1.13	<i>Review Date</i>	:	<i>1 October in 2030 and in every 33rd year following</i>

Clause 2 Definitions

- 2.5 *"the Retained Parts" means those parts of the Estate.....not included.....in this demise.....*

Clause 7 [Tenant's covenants]

7.1 to pay contributions by way of Service Charge to the Landlord equal to the Tenant's Proportion of the amount which the Landlord may from time to time expend and as may be reasonably required on account of anticipated expenditure on rates services repairs maintenance or insurance being and including expenditure described in the Third Schedule.....

Clause 8 [Landord's covenants]

8.2 whenever so requested by the Tenant or by the tenant of any other flat in the Building or whenever the Landlord may think fit to take reasonable care to keep in good and substantial repair reinstate replace and renew the Retained Parts.....

8.3 at the request of the Tenant or the tenant of any other flat in the Building as often as reasonably necessary or as often as the Landlord may think fit to decorate the exterior of the Building.....

8.4(a) to keep the Estate.....insured.....against loss or damage by fire storm tempest explosion and other risks.....as the landlord thinks fit.....for the cost of reinstatement.....and for three years' loss of rent

8.5 to insure.....against all third party claims.....

**Second Schedule
Ground rent**

The yearly rent shall be

(1) until the first Review Date the Initial Rent

(2) for the period 1 October 2030 to 30 September 2063 the sum of £200 per annum

(3) for the period 1 October 2063 to 30 September 2096 the sum of £400 per annum

Third Schedule

Paragraph 1

The expenditure (in this Schedule described as "the Service Charge Expenditure") means expenditure :

- (1) in the performance and observance of the covenants obligations and powers on the part of the Landlord and contained in this Lease
- (2) in the payment of the expenses of management of the Estate of the proper fees of surveyors or agents appointed by the Landlord in connection with the performance of the Landlord's obligations and powers and with the apportionment and collection of those expenses and fees between and from the several parties liable to reimburse

the Landlord for them and of the expenses and fees for the collection of all other payments due from the tenants of the flats in the Building not being the payment of rent to the Landlord

(4).....the meaning of the Service Charge Expenditure shall be deemed to include reasonable provision for the future in respect of :

(1) periodically recurring items.....

(2) the replacement or renewal of items

Preliminary points

11. The dates on which the Respondent/Leaseholders had acquired their respective flats were :
 - a. Miss Cristofoli 85 Seabourne Road : 25 November 2003
 - b. Mr Williams 85A Seabourne Road : 20 June 2005
12. The Tribunal noted at the hearing that the Applicant/Landlord statement dated the 11 November 2008 referred only to 85 Seabourne Road, and attached an extract only of the lease relating to 85 Seabourne Road
13. However :
 - a. the Tribunal also noted that the application itself named both Miss Cristofoli and Mr Williams as respondents, and referred to both 85 Seabourne Road and 85A Seabourne Road
 - b. Mr Khan stated at the hearing that he had intended that the application should relate to both Flats so far as service charges were concerned, and that he was asking the Tribunal to treat his application as relating to both Flats
 - c. Mr Williams stated at the hearing that he was ready to deal with the application so far as 85A Seabourne Road was concerned, and would also like the Tribunal to treat the application as relating to both Flats
 - d. The Tribunal indicated that it was happy to do so accordingly

The Applicant/Landlord's statement 11 November 2008

14. The Applicant/Landlord stated that :
 - a. the Applicant/Landlord was entitled to an annual fee for managing the Building whether personally or through an agent besides the reimbursements and/or payments mentioned in the Fourth Schedule, a copy of the Fourth Schedule of the lease of 85 Seabourne Road being attached:
 - apart from actual performance, the Applicant/Landlord was at all times bound not only by the terms of the lease, but also by those of the contract of insurance
 - time spent on administration/management matters was about 48 hours a year
 - it involved :
 - visit to and inspection of the Building
 - arranging insurance
 - obtaining estimates
 - dealing with correspondence
 - trips to Post office
 - keeping records
 - b. the ground rent of 85 Seabourne Road should be increased to bring it in line with inflation and then should remain linked to inflation :

- at the time when the lease was granted the ratio between the value of the rent and the value of the maisonette was £20 to £17,000
- since then the value of the maisonette had increased to about 8 times its original value
- so should the rent, in order to maintain the same ratio of 20 : 17,000

The Respondent/Leaseholders response 7 December 2008

15. The Respondent/Leaseholders stated that the Applicant/Landlord's statement related only to 85 Seabourne Road, and not to both flats
16. In relation to the request for an annual management fee in relation to 85 Seabourne Road :
- a. the Applicant/Landlord had been adding a 10% administration fee to arrange the insurance
 - b. the Applicant/Landlord was not entitled to do so
 - c. the Applicant/Landlord could only add a 10% administration fee in relation to the expenditure detailed in the Fourth Schedule
 - d. the Applicant/Landlord had demanded a service charge of £295 a year per flat for 2003 and 2004 totalling £590
 - e. however, the only work with which the Applicant/Landlord had been involved in the last 4 years 10 months had been :
 - chimney repair, in respect of which Miss Cristofoli had :
 - arranged the only satisfactory quote
 - arranged the work
 - provided the invoice to the Applicant/Landlord with Miss Cristofoli's share of the cost
 - arranging insurance
 - f. a history of correspondence was set out relating to :
 - management fee and service charge
 - tiling of front porch
 - chimney repair
 - painting of exterior
 - g. no evidence of expenditure had been provided
 - h. in relation to the Applicant/Landlord's list of administration/management items :
 - visit to and inspection of the Building :
 - Miss Cristofoli had never seen the Applicant/Landlord at the Building during her 5 years of ownership
 - Mr Williams had known the Applicant/Landlord to visit only once
 - arranging insurance :
 - the Applicant/Landlord had never provided competitive quotes
 - he had simply renewed the insurance each year with minimal effort
 - obtaining estimates :
 - the Applicant/Landlord had provided only one quote during Miss Cristofoli's ownership, namely for painting the Building
 - the Applicant/Landlord had not arranged any maintenance of the Building during that time
 - the Respondent/Leaseholders had been maintaining the Building themselves
 - dealing with correspondence :

- most of the correspondence had been disputes about the Applicant/Landlord's inadequate management of the Building
- the Applicant/Landlord should not be able to charge for such correspondence
- trips to Post office : these were not relevant to a service charge
- keeping records :
 - the Applicant/Landlord had provided one statement of account per flat in the last 5 years
 - that account was unsatisfactory as no evidence of expenditure had been provided
 - on the 14 September 2007 the Applicant/Landlord asked Mr Williams for a history of all payments to the Applicant/Landlord, which suggested that the Applicant/Landlord did not keep satisfactory records

17. In relation to the request to increase the rent in relation to 85 Seabourne Road :
- a. the lease set out the ground rent, and stated that it would double every 33 years, with the first increase in 2014
 - b. the lease was a legal contract, and could not be amended by the Applicant/Landlord

Respondent/Leaseholders' bundle relating to 85 Seabourne Road

18. Amongst other documents were the following :
- a. a letter from the Respondent/Leaseholders to the Applicant/Landlord dated the 11 November 2008 stating that :
 - in relation to 85 Seabourne Road a 10% administration fee could not be added to ground rent and building insurance, but only to expenses listed in the Fourth Schedule to the lease
 - Miss Cristofoli accordingly required reimbursement of £81.28 administration fees paid in respect of ground rent and buildings insurance :

○ 2005/6	18.56
○ 2006/7	19.60
○ 2007/8	20.69
○ 2008/9	<u>22.43</u>
○	81.28
 - in relation to 85A Seabourne Road there was no right to add a 10% administration fee
 - Mr Williams accordingly required reimbursement of £81.30 administration fees paid in respect of ground rent and buildings insurance :

○ 2005/6	18.56
○ 2006/7	19.60
○ 2007/8	20.69
○ 2008/9	<u>22.45</u>
○	81.30
 - b. a letter from the Applicant/Landlord to Miss Cristofoli dated the 6 November 2006 enclosing the following "account data" :
 - period 25 November 2003 to 30 September 2004 :

building insurance	128.18
admin @ 10%	12.82
rent	16.67
correspondence in : 11 items @ 8.75	96.25
correspondence out 13 items @ 17.50	<u>227.50</u>

	484.75
payment received	<u>443.18</u>
debit balance carried forward	41.57
• period 1 October 2004 to 30 September 2005	
building insurance	184.51
admin @ 10%	18.45
rent	20.00
correspondence in : 3 items @ 8.75	26.25
correspondence out : 5 items @ 17.50	<u>87.50</u>
	378.28
payment received	<u>499.51</u>
credit balance carried forward	(121.23)
• period 1 October 2005 to 30 September 2006	
building insurance	187.57
admin @ 10%	18.56
rent	20.00
correspondence in : 6 items @ 8.75	52.50
correspondence out : 8 items @ 17.50	<u>140.00</u>
	295.40
payment received	<u>205.56</u>
debit balance carried forward	89.84
• period 1 October 2006 to 30 September 2007	
building insurance	195.96
admin @ 10%	19.60
rent	20.00
correspondence in : nil items @ 8.75	0
correspondence out : 2 items @ 17.50	<u>35.00</u>
	360.40
payment received	<u>0</u>
debit balance carried forward	360.40
c. a letter from the Applicant/Landlord to Miss Cristofoli dated the 24 October 2005 stating that :	
• Schedule 4 paragraph 7 could not mean that when the Building was run by the landlord's agent the tenants had to pay the agent's fee, but when run by the landlord himself it was free	
• Schedule 4 paragraph 8 meant that if an agent was appointed to take charge of work on site the tenants must pay the cost of the work plus the agent's fee, but if there was no agent, the tenants must pay the cost of the work plus 10%	
• paragraphs 7 and 8 did not depend on each other for their meaning	
d. service charge demands relating to 85 Seabourne Road were as follows :	
• Marlborough Holdings, "estate management specialists", for period 25 March 1999 to 24 March 2000	
insurance	160.00
accountants	185.00
provision for repairs	150.00
management fees	324.25
VAT on fees	<u>56.74</u>
	875.99

- Applicant/Landlord for period 1 October 2003 to 30 September 2004

reserve fund	125.00
insurance	128.18
accounting	55.00
management	295.00
ground rent	<u>20.00</u>
	623.18
- Applicant/Landlord for period 1 October 2004 to 30 September 2005

insurance	184.51
management	295.00
ground rent	<u>20.00</u>
	499.51
- Applicant/Landlord for period 1 October 2005 to 30 September 2006 (as amended)

insurance	185.57
management	295.00
ground rent	<u>20.00</u>
	500.57

Respondent/Leaseholders' bundle relating to 85A Seabourne Road

19. Amongst other documents were the following :

- a. Norwich Union Calibre insurance policies relating to 85 Seabourne Road in the name of the Applicant/Landlord and endorsed with the interests of both Respondent/Leaseholders, and noting the following cover :
 - 21 September 2006 :

○ building sum insured :	£226,939
○ accidental damage :	yes
○ contents sum insured :	£2,700
○ accidental damage :	not available
○ loss of rent/alternative accommodation :	£42,363 (maximum 24 months)
○ property owners liability :	£1,000,000
 - 21 September 2007 :

○ building sum insured :	£236,924
○ accidental damage :	yes
○ contents sum insured :	£2,816
○ accidental damage :	not available
○ loss of rent/alternative accommodation :	£47,385 (maximum 24 months)
○ property owners liability :	£1,000,000
 - 21 September 2008 :

○ building sum insured :	£249,504
○ accidental damage :	yes
○ contents sum insured :	£2,816
○ accidental damage :	not available
○ legal expenses :	not applicable
○ loss of rent/alternative accommodation :	as policy wording
- b. a letter from the Applicant/Landlord to Mr Williams dated the 6 November 2006 enclosing the following "account data" :
 - period 20 June 2005 to 30 September 2005

correspondence in : 2 items @ 8.75	17.50
correspondence out : 1 item @ 17.50	<u>17.50</u>
	35.00
payment received	<u>0</u>
debit balance carried forward	35.00
• period 1 October 2005 to 30 September 2006	
building insurance	187.57
admin @ 10%	18.56
rent	100.00
correspondence in : 2 items @ 8.75	17.00
correspondence out : 4 items @ 17.50	<u>70.00</u>
	426.13
payment received	<u>580.57</u>
credit balance carried forward	(154.44)
• period 1 October 2006 to 30 September 2007	
building insurance	195.96
admin @ 10%	19.60
rent	100.00
correspondence in : nil items @ 8.75	0
correspondence out : 2 items @ 17.50	<u>35.00</u>
	196.12
payment received	<u>0</u>
debit balance carried forward	196.12
c. a letter from the Applicant/Landlord to Mr Williams dated the 27 October 2007, headed “payments to landlord re 85A Seabourne Road” asking for a letter to confirm that Mr Williams’s account was now in balance, and that that no money was now due to Mr Williams or from Mr Williams to date	
d. a letter from Mr Williams to the Applicant/Landlord dated the 28 October 2007 stating that it was Mr Williams’s belief that his account with Mr Khan was now balanced	

The service charge issues in relation to 85 Seabourne Road

20. Mr Khan agreed at the beginning of the hearing that the most effective way of examining the service charge issues was to consider in turn each of the items in the service charge demands and the “account data” sheets
21. The parties’ submissions at the hearing in relation to each item, and the Tribunal’s decision and reasons in each case, were as follows

Service charge demand for period 1 October 2003 to 30 September 2004

22. ***Reserve Fund £250***
23. At the hearing Mr Khan stated that this item had been withdrawn and was not being claimed from Miss Cristofoli
24. Miss Cristofoli agreed

25. The item was accordingly not in issue before the Tribunal
26. ***Insurance £129.18***
27. Miss Cristofoli stated that there was no dispute in relation to this item, which was accordingly not in issue before the Tribunal
28. ***Accounting £55***
29. Again, Mr Khan stated that this item had been withdrawn and was not being claimed from Miss Cristofoli, and was accordingly not in issue before the Tribunal
30. ***Management £295***
31. Mr Khan submitted that :
- a. in hindsight, the figure of £295 was a little “steep”
 - b. in the past, Marlborough Holdings had made a charge for management of £324.25 plus VAT, as shown on their invoice dated the 23 April 1999
 - c. he was entitled to charge a similar management charge
 - d. the £295 figure in his service charge demand had been arrived at by adding together the Marlborough invoice figures of £185 (accountancy fee) £324.25 (management) and £56.74 (VAT), which came to £565.99, dividing by 2, which came to £282.49 a Flat, and adding a modest sum for inflation to bring each Flat’s contribution to £295
 - e. when Miss Cristofoli had asked for details, he had sent her the “account data” sheets, which had showed that the figures in relation to the £295 for the relevant period were £12.82 (namely 10% of the insurance figure of £128.18), £96.25 (correspondence in) and £227.50 (correspondence out), which came to £336.57
 - f. the rates for the charges for correspondence in and correspondence out were the same rates which Mr Khan’s solicitors charged Mr Khan for doing other legal work for him, and were accordingly reasonable rates
32. The Tribunal invited submissions from Mr Khan about the provisions in the lease which Mr Khan relied upon as entitling him to include a management charge in the service charge payable by Miss Cristofoli
33. Mr Khan’s submissions were that :
- a. under the Fourth Schedule paragraph 7 he was entitled to charge for all expenses incurred in managing the Building
 - b. the expression “expenses incurred” included the expense of time incurred by Mr Khan
 - c. under the Fourth Schedule paragraph 8 he was entitled, so long as he did not employ managing agents, to charge 10% to “any of the above items for administration”
 - d. he had charged 10% of the insurance premium by way of administration charge in response to Miss Cristofoli’s assertion that he was entitled to charge 10% rather than a management charge as such
 - e. the 10% under the Fourth Schedule paragraph 8 was in substitution for a charge under the Fourth Schedule paragraph 7; he was entitled to one or the other, but not both
 - f. the 10% could be added to expenses paid out, such as repairs
 - g. the expression “the above items” meant the items listed previously in the Fourth Schedule

- h. the reference in the Fourth Schedule paragraph 5 to “insurance against third party risks” was a reference to the risks shown as “property owner’s liability £1,000,000” in the policy schedules
- i. that figure had now increased to £2,000,000, and was still covered, despite the absence of any mention of it in the latest policy schedule
- j. there was no breakdown of the premium between insurance against third party risks and insurance against other risks
- k. in any event, he was entitled to add 10% to the whole premium, not just to that part of the premium which related to third party risks, despite the reference only to the latter in the Fourth Schedule paragraph 5, and despite the omission of any reference to insurance against other risks in the Fourth Schedule; Miss Cristofoli’s letter of the 17 October 2005 had asserted that he was entitled to add 10% to the whole premium, and he had accepted that assertion, particularly as he was not receiving any other remuneration

34. Miss Cristofoli’s submissions were that :

- a. the explanations by Mr Khan for the £295 :
 - were mutually contradictory
 - did not add up
 - did not make sense
- b. there had been no previous mention of charging for correspondence until the “account data” sheets
- c. in any event, most of the correspondence related to her dispute with Mr Khan about the service charges he was trying to claim, and he should not be able to charge in those circumstances
- d. in any event, he should not be charge at the same rate as a solicitor would charge
- e. she had not sought legal advice about the wording of the lease before writing her letter of the 17 October 2005
- f. now that she had taken legal advice she realised that her letter had been wrong
- g. all Mr Khan was entitled to was 10% of money spent by him on any of the previous items mentioned in the Fourth Schedule
- h. the Fourth Schedule paragraph 7 did not entitle him to charge the expense of his time, because the preamble to the Fourth Schedule was “costs expenses and matters in respect of which the Lessee is to contribute”, which meant expenditure of *money*, not expenditure of *time*
- i. building insurance was not included in “the above items” for the purposes of the addition of the 10%, because “the above items” meant items previously listed in the Fourth Schedule, including insurance against third party risks, whereas building insurance was not mentioned in the Fourth Schedule, but in clauses 1 and 3(b)

35. The Tribunal provided the parties with copies of the Land Tribunal decisions in **London Borough of Brent v Hamilton**, 66 Mead Court, Buck Lane, Kingsbury, London, LRX/51/2005, and **Norwich City Council v Marshall**, 5 West Pottergate, Norwich, LRX/114/2007, and indicated that the Tribunal would defer the making of a decision in relation to this aspect of the case until the 16 January 2009, to enable the parties to make any representations about the impact on the case, if any, of those Land Tribunal decisions

36. By an undated letter and an “addendum” dated the 14 January 2009 Mr Khan made further submissions about his claimed entitlement to management fees, but made no submissions in relation to the Lands Tribunal cases of **London Borough of Brent v Hamilton** and **Norwich City Council v Marshall**, expressly leaving their interpretation and application to the Tribunal
37. By a letter dated the 14 January 2009 Miss Cristofoli and Mr Williams submitted that both Lands Tribunal cases were irrelevant to their case as both cases referred to council-maintained properties which had fixed costs relating to property maintenance and were large properties with communal areas and services. The Building was a small 2-bedroom converted property with minimal communal areas maintained by the residents, and there were no management costs to Mr Khan

The Tribunal's findings

38. The Tribunal finds that :
- a. the expression “all other expenses.....incurred by the Lessors” in the Fourth Schedule paragraph 7 is to be interpreted as meaning “all other money spent by the Lessors”, and is not to be interpreted as including the cost of any time spent by the Lessors, because :
 - sums are payable by way of service charge only if so permitted by the lease
 - the natural meaning of the words “expenses.....incurred” is “money spent”, or “money liable to be spent”, not “the cost of time spent”
 - the context of the Fourth Schedule paragraph 7 is :
 - clause 4(ii), and the preamble to the Fourth Schedule, which each refer to “costs expenses and outgoings and matters”, and which each imply, by their natural meaning, the spending of money, not the cost of time spent
 - each of the previous paragraphs of the Fourth Schedule, by their natural meaning, imply the spending of money, not the cost of time spent :
 - paragraph 1 : “the expense of.....”
 - paragraph 2 : “the cost of.....”
 - paragraph 3 : “the cost of.....”
 - paragraph 4 : “all rates.....payable.....”
 - paragraph 5 : “the cost of.....”
 - paragraph 6 : “the hire charge or other expense payable.....”
 - paragraph 8 of the Fourth Schedule (“the fees and disbursements paid.....”), by its natural meaning, implies the spending of money, not the cost of time spent
 - paragraph 9 of the Fourth Schedule does not entitle the Lessors to charge for time spent at large, but only entitles the Lessors to charge their normal charges, including profit :
 - “when any repairs.....are carried out by the Lessors”, and
 - “as the expenses or costs thereof”
 - if it had been intended to include in paragraph 7 of the Fourth Schedule the cost of time spent by the Lessors then it would have been easy to do so
 - on the contrary, paragraph 8 of the Fourth Schedule expressly permits the Lessors to add an administration charge of 10% in the event of no managing agent being appointed, and, as agreed by both Mr Khan and Miss Cristofoli at the hearing, the Lessors cannot charge for the same item under both paragraph 7 and paragraph 8 of the Fourth Schedule
 - in relation to the Land Tribunal decisions :

- **London Borough of Brent v Hamilton.** The respondent leaseholder in that case was liable to contribute by way of service charge to “the expenditure incurred by the Council” in fulfilling the council’s covenants under the lease. The council employed Brent Housing Partnership to manage their housing stock. The council included in the service charge a 15% management fee. The Lands Tribunal found that “expenditure” meant spending, or financial outgoings. “Incurred” could include the incurring of liability as well as the making of a payment. In order to carry out its obligations under the lease, the council could only act through its employees or agents. It would incur expenditure in so doing. The reasonable cost of employing agents to do so was payable by way of service charge
 - **Norwich City Council v Marshall.** The respondent leaseholder in that case was liable to contribute by way of service charge to “the Council’s expenditure” in complying with the council’s covenants under the lease. The council employed a number of members of staff to manage their leasehold properties. The council included in the service charge a management fee of £40 a leaseholder, to cover some of the cost of employing those members of staff, and some of the council’s running costs. The Lands Tribunal found that the council was entitled to include in the service charge such of its costs of management as had been reasonably incurred for the specific purposes of complying with the council’s covenants under the lease, but other management costs could not be included
 - the Tribunal finds that neither Lands Tribunal decision assists the Applicant/Landlord in this case. Unlike the councils in those cases, the Applicant/Landlord is able to carry out his obligations under the lease without acting through members of staff or employing agents
- b. the expression “shall be entitled to add ten per cent to any of the above items” in paragraph 8 of the Fourth Schedule is to be interpreted as meaning “shall be entitled to add ten per cent to any money spent by the Lessors on any of the items mentioned in paragraphs 1 to 7 inclusive of the Fourth Schedule”, because that is the natural meaning of the words used in the context of the Fourth Schedule as a whole
- c. the only cost of insurance to which the Lessors are entitled to add 10% is “the cost of insurance against third party risks” under the Fourth Schedule paragraph 5, because :
- the Lessors are entitled to add 10% only to those items previously mentioned in the Fourth Schedule, for reasons already given
 - there is no other reference to insurance in the Fourth Schedule
 - on the contrary, the Lessee’s liability to contribute to the cost of insurance is contained in clause 1 of the lease, not in the clause imposing a liability for service charge, namely clause 4(ii)
 - the expression “insurance against third party risks” in the Fourth Schedule paragraph 5 is, as agreed by Mr Khan at the hearing, a reference to the risks shown as “property owner’s liability £1,000,000” in the policy schedules, and does not include buildings insurance as such
- d. in relation to the sum of £295 claimed for management :
- the Tribunal is not persuaded by Mr Khan’s suggestion at the hearing that the sum could be justified on the basis of taking a sum included for management by previous managing agents in a service charge demand in 1999 and adding something for inflation; on the contrary, the Tribunal finds that a sum can be claimed by way of service charge under the lease only if it has been spent by the Lessors and is listed under

- paragraphs 1 to 7 or charged under paragraph 9 of the Fourth Schedule, for reasons already given, and then only if it has been reasonably incurred
- the sums in the “account data” sheet for letters written and received by Mr Khan are not sums which are payable by way of service charge because :
 - there is no express provision in the Fourth Schedule for including a charge for such items
 - the cost of time spent by Mr Khan in dealing with such items is not payable by way of service charge for reasons already given
 - there is no evidence before the Tribunal justifying the inclusion of the sum of £295 in the service charge demand
 - the sum of £295 is not payable accordingly
- e. in relation to the sum of £12.82 claimed as 10% of the cost of insurance :
- the sum of £12.82 appears to have been calculated by applying 10% to the sum of £128.18, being Miss Cristofoli’s share of the total premium for insuring the Building
 - however, the 10% administration charge can be added only to that part of the premium which relates to the cost of insuring against third party risks, for reasons already given
 - there is no evidence before the Tribunal showing a breakdown of the premium so far as concerns the various risks covered by the insurance, or showing whether any part of the premium is apportionable to the cost of insuring against third party risks
 - the sum of £12.82 is not payable accordingly, but the Tribunal is unable, on the evidence before it, to make any finding about what, if any, sum is payable in respect of the cost of insuring against third party risks

Service charge demands for subsequent periods

39. The parties agreed that the issues were the same as those already considered in relation to the period 1 October 2003 to 30 September 2004

The Tribunal’s findings

40. The Tribunal finds that :
- a. in relation to the period 1 October 2004 to 30 September 2005 :
 - the sum of £295 is not payable, for the same reasons as already given in relation to the similar sum for the period 1 October 2003 to 30 September 2004
 - no sum is payable in respect of letters written or received by Mr Khan, for the same reasons as already given in relation to similar items for the period 1 October 2003 to 30 September 2004
 - the sum of £18.45 is not payable by way of an addition of 10% to the cost of insurance, for the same reasons as already given in relation to the similar item for the period 1 October 2003 to 30 September 2004, but the Tribunal is unable, on the evidence before it, to make any finding about what, if any, sum is payable in respect of the cost of insuring against third party risks
 - b. in relation to the period 1 October 2005 to 30 September 2006 :
 - the sum of £295 is not payable, for the same reasons as already given in relation to the period 1 October 2003 to 30 September 2004
 - no sum is payable in respect of letters written or received by Mr Khan, for the same reasons as already given in relation to the period 1 October 2003 to 30 September 2004

- sum of £18.56 is not payable by way of an addition of 10% to the cost of insurance, for the same reasons as already given in relation to the period 1 October 2003 to 30 September 2004, but the Tribunal is unable, on the evidence before it, to make any finding about what, if any, sum is payable in respect of the cost of insuring against third party risks
- c. in relation to the period 1 October 2006 to 30 September 2007
- no sum is payable in respect of letters written or received by Mr Khan, for the same reasons as already given in relation to the period 1 October 2003 to 30 September 2004
 - the sum of £19.60 is not payable by way of an addition of 10% to the cost of insurance, for the same reasons as already given in relation to the period 1 October 2003 to 30 September 2004, but the Tribunal is unable, on the evidence before it, to make any finding about what, if any, sum is payable in respect of the cost of insuring against third party risks

The service charge issues in relation to 85A Seabourne Road

41. *Service charges before the 28 October 2007*

42. Mr Khan submitted that Mr Williams's letter dated the 28 October 2007 had agreed his service charges up to that date and that Mr Williams should not be able to resile from that agreement
43. Mr Williams agreed that he had written that letter and that by doing so he had intended to agree the service charges up to that date
44. The Tribunal indicated that the Tribunal accordingly had no jurisdiction to consider service charges before that date, by virtue of section 27A(4)(a) of the 1985 Act

45. *Service charges after the 28 October 2007*

46. Mr Khan's submissions were that :
- a. he accepted that the items chargeable by way of service charge under the lease were the items of "expenditure" listed in the Third Schedule of Mr Williams's lease
 - b. however, "expenditure" included the expenditure of Mr Khan's time
 - c. in relation to each of the items listed in his statement dated the 11 November 2008 :
 - visit to and inspection of the Building : the expenditure for which he was entitled to charge was his time spent and his travelling costs
 - arranging insurance: the expenditure for which he was entitled to charge was his time spent and the cost of telephone calls and postage
 - obtaining estimates: the expenditure for which he was entitled to charge was his time spent and the cost of postage
 - dealing with correspondence: the expenditure for which he was entitled to charge was his time spent and the cost of postage
 - trips to Post office: the expenditure for which he was entitled to charge was his time spent
 - keeping records: the expenditure for which he was entitled to charge was his time spent

47. Mr Williams's submissions were that :

- a. “expenditure” for the purposes of the Third Schedule was the expenditure of money, not time
- b. time spent was part of being a landlord, for which the landlord received a ground rent
- c. although the other items could properly be described as “expenditure”, their cost could not properly be regarded as “expenditure” for the purposes of the Third Schedule

48. In answer to a question from the Tribunal, Mr Khan accepted that the reference in clause 7.1 of the lease to the lessee paying contributions by way of Service Charge to the Landlord equal to the Tenant’s proportion of the “*amount which the Landlord may from time to time expend*” did not bring out the fact that time spent could be “expenditure” for the purposes of the Third Schedule. However, common sense dictated that he could not be expected to expend time without recompense

The Tribunal’s findings in relation to service charges after the 28 October 2007

49. The Tribunal finds that :

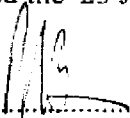
- a. the expression “expenditure” in the Third Schedule is to be interpreted as meaning “money spent”, and is not to be interpreted as including the cost of any time spent by the Landlord, because :
 - sums are payable by way of service charge only if so permitted by the lease
 - the natural meaning of the word “expenditure” is “money spent”, not “the cost of time spent”
 - the context of the Third Schedule is clause 7.1 which refers to “the amount which the Landlord may.....expend”, which implies, by its natural meaning, the spending of money, not the cost of time spent
 - if it had been intended to include in the Third Schedule the cost of time spent by the Lessors then it would have been easy to do so
 - in relation to the Land Tribunal decisions in **London Borough of Brent v Hamilton** and **Norwich City Council v Marshall**, the Tribunal finds that they do not assist the Applicant/Landlord for the same reasons as already given in relation to Miss Cristofoli’s service charges
- b. in relation to each of the items listed in Mr Khan’s statement dated the 11 November 2008, the Tribunal finds that :
 - visit to and inspection of the Building :
 - reasonably incurred, actual expenditure on travelling costs for that purpose, in order to comply with the Landlord’s statutory and contractual obligations under the lease, may be payable by way of service charge
 - the cost of time spent by the Landlord is not payable by way of service charge for reasons already given
 - arranging insurance:
 - reasonably incurred, actual expenditure on the cost of telephone calls and postage for that purpose, in order to comply with the Landlord’s contractual obligations under the lease, may be payable by way of service charge
 - the cost of time spent by the Landlord is not payable by way of service charge for reasons already given
 - obtaining estimates:
 - reasonably incurred, actual expenditure on the cost of postage for that purpose, in order to comply with the Landlord’s contractual obligations under the lease, may be payable by way of service charge

- the cost of time spent by the Landlord is not payable by way of service charge for reasons already given
- dealing with correspondence:
 - reasonably incurred, actual expenditure on the cost of postage for that purpose, in order to comply with the Landlord's contractual obligations under the lease, may be payable by way of service charge
 - the cost of time spent by the Landlord is not payable by way of service charge for reasons already given
- trips to Post office:
 - there is no evidence before the Tribunal that Mr Khan incurs any expenditure in that respect in order to comply with his obligations under the lease, and no sums are payable by way of service charge in that respect accordingly
 - the cost of time spent by the Landlord is not payable by way of service charge for reasons already given
- keeping records: the expenditure :
 - there is no evidence before the Tribunal that Mr Khan incurs any expenditure in that respect in order to comply with his obligations under the lease, and no sums are payable by way of service charge in that respect accordingly
 - the cost of time spent by the Landlord is not payable by way of service charge for reasons already given

The application to vary the ground rent

50. Mr Khan submitted that the Tribunal had jurisdiction to consider the requested variation under section 35 of the Landlord and Tenant Act 1987
51. However, the Tribunal indicated that the Tribunal had no jurisdiction to vary a ground rent either under section 35 of the Landlord and Tenant Act 1987 or at all

Dated the 23 January 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor