

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/19UC/LSC/2009/0071

DECISION and REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Leaseholder : Mr Paul Sherring

Respondent/Management Company : Redwing Management Limited

Building : 153-155 Barrack Road, Christchurch, Dorset, BH23 2AP

Flat 2 : Flat 2 in the Building

Date of Application : 30 April 2009

Date of Provisional Directions : 8 May 2009

Date of Directions Hearing : 5 June 2009

Date of Substantive Hearing : 28 July 2009

Venue : Hallmark Hotel, 7 Durley Chine Road, Bournemouth, BH2 5JS

Appearances for Applicant/Leaseholder : Mr Sherring and Mrs Maria Sherring

Appearances for Respondent/Landlord: no attendance or representation

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr M J Ayres FRICS, and Mrs J E S Herrington

Date of Tribunal’s Decision and Reasons : 3 August 2009

Introduction

1. At the directions hearing on the 5 June 2009, the following matters were identified as issues for the Tribunal to determine at the substantive hearing of this application, namely :
 - a. in relation to the service charge for the year 2007 to 2008, whether, and, if so, to what extent, the following sums were payable :
 - bank charges £94
 - maintenance costs/sinking fund £4,088
 - postage and stationery £55
 - management fee £1,000

- b. in relation to the service charge for the year 2008 to 2009, whether, and, if so, to what extent, the following sums were payable :
 - bank charges £100
 - maintenance costs/sinking fund £4,250
 - postage and stationery £60
 - management fee £1,200
 - c. whether, and, if so, to what extent, the costs incurred by the Respondent/Management Company, or by the lessor, in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder
2. No dispute has been raised concerning the identity of the person by whom the service charges are payable, the person to whom they are payable or when or in what manner they are payable

Statutory Provisions

3. 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 –

- 1. only to the extent that they are reasonably incurred, and*
- 2. 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

4. The documents before the Tribunal are :
- a. the application
 - b. the Respondent/Management Company's bundle, pages 1 to 50
 - c. the Applicant/Leaseholder's bundle

Inspection

5. The Tribunal inspected the Building on the morning of the hearing on the 28 July 2009. Also present were Mr and Mrs Sherring
6. The Building comprised a 2-storey block of 6 flats. Flat 2 was at the rear. There was a flat roof at ground floor level across the whole of the rear of the Building
7. There is a helpful photograph in the agents' particulars in the Applicant/Leaseholder's bundle. There is a description of each room in the agents' particulars in the Applicant/Leaseholder's bundle, and a plan attached to the lease, also in the Applicant/Leaseholder's bundle
8. The Tribunal the noted the following :
- a. the front garden had 2 patches of lawn, measuring about 9 m x 9m and about 9m x 3m

respectively

- b. the border contained at least one dead-looking bush, and some litter
- c. the fascia above the front door was dirty, with a name scrawled in the dirt
- d. the central front gutter had vegetation growing in it
- e. the rear garden was laid to tarmac, with a border containing trees on the left and vegetation on the right and at the back
- f. there were several fence panels missing on the right
- g. the communal hall between the front and back doors had leaves and paper on the floor
- h. there was no evidence in the communal hall of smoke alarms, fire extinguishers, fire safety notices, or certificates of insurance

The lease of Flat 2 27 January 1992 (copied in the Applicant/Leaseholder's bundle)

9. For the purposes of these proceedings the material parts of the lease are as follows :

Clause 6 (covenants by Respondent/Management Company)

- (1).....*maintain redecorate and keep in good and substantial repair*
 - (i) *the foundations roof main structure boundary walls pathways fences gutters and rainwater pipes parking forecourt parking spaces driveways and gardens and grounds of the Building*
 - (ii) *[common pipes and cables]*
 - (iii) *[common halls passages landings and staircases]*
- (2) *[light and clean common halls passages landings and staircases]*
- (3) *[decorate exterior]*
- (4) *[insure]*
- (5) *[enforce other lessees' covenants]*
- (6) *[notify lessor of defects]*
- (7) *to do all such things and perform such acts as may be desirable and reasonable to maintain the Building and keep the same in good condition*

Clause 7 [Applicant/Leaseholder's covenants]

- (2).....
 - (i) *pay the [Respondent/Management Company] one sixth of the expenditure incurred by the [Respondent/Management Company] on the matters specified in the Fifth Schedule hereto and in carrying out its obligations under clause 6 hereof in respect of the Building (such proportion being hereafter referred to as "the maintenance charge")*
 - (ii) *pay [an advance sum] as a contribution to the maintenance charge*
 - (iii) *as soon as practicable after the end of each financial year... ..of the [Respondent/Management Company] the [Respondent/Management Company] shall furnish to the [Applicant/Leaseholder] an account of the maintenance charge... ..for that year [and any underpayments or overpayments by the Applicant/Leaseholder shall be paid by the Applicant/Leaseholder or credited by the Respondent/Management Company]*
 - (iv) *[the financial year is the 29 September to the 28 September]*

- (v) *the amount of the maintenance charge shall be ascertained and certified annually by a certificate of annual expenditure.....signed by the [Respondent/Management Company.....]*
- (vi) *the certificate shall contain a fair summary of the Respondent/Management Company's] expenditure and outgoings.....*
- (vii) *the expenditure incurred by the [Respondent/Management Company] in any financial year may if the [Respondent/Management Company] in its absolute discretion thinks fit include not only the actual expenditure during the financial year.....but also such reasonably anticipated expenditure of a periodic or recurring nature as the [Respondent/Management Company]shall in its.....sole discretion allocate to the year in question as being fair and reasonable in the circumstances*
- (viii) *[the Applicant/Leaseholder may by appointment inspect the vouchers and receipts]*
- (ix).....
- (x) *[the Respondent/Management Company may adjust the amount of the advance contribution by notice accompanied by a statement of reasonable expenditure]*

Fifth Schedule [costs expenses outgoings and matters in respect of which the Lessee is to contribute]

1. *The expenses of maintaining repairing redecorating and renewing :*
 - (i) *the roof main structure and exterior of the Building and boundary walls stairways pathways fences gutters and rainwater pipes of the Building*
 - (ii) *[common pipes and cables]*
 - (iii) *[common halls passages landings and staircases gardens grounds drive parking area and other facilities]*
2. *The cost of maintaining repairing redecorating renewing cleansing lighting and providing such other services as the [Respondent/Management Company] may consider appropriate*
3. *The cost of decorating the exterior*
4. *All rates taxes and outgoings [for all common parts]*
5. *The cost of employing such professional advisers and agents as shall be reasonably required in connection with the management of the Building*
6. *The cost of insurance.....*
7. *The cost of maintaining repairing and renewing [aerials]*
8. *The cost of formation of and the administrative costs of running the [Respondent/Management Company] including the cost of auditors for the [Respondent/Management Company]*
9. *The cost of renewing maintaining repairing and cleansing all [common] ways walls partitions channels sewers drains pipes watercourses and easements.....*
10. *The cost of cleansing the external surfaces of the windows at least once [a] month*
11. *The cost of the [common] water service charges.....*

The substantive hearing on the 28 July 2009

Preliminary matter

10. No-one attended the hearing on behalf of the Respondent/Management Company. The Tribunal noted that Mr S Griffiths, who had attended the directions hearing on behalf of the Respondent/Management Company, and who had submitted papers on behalf of the Respondent/Management Company, had sent a fax to the Tribunal to say that he would not be attending the substantive hearing
11. The Tribunal was satisfied that notice of the time date and venue of the hearing had been given to the Respondent/Management Company, and decided to proceed with the hearing in the absence of the Respondent/Management Company

The issues, the parties' representations, and the Tribunal's decisions

12. The parties' representations about each of the issues before the Tribunal, and the Tribunal's decisions in each case are as follows

Service charge for the year 2007 to 2008

Bank charges £94

13. The Respondent/Management Company's comments at page 1 of the Respondent/Management Company's bundle were that the tenants were not paying enough to keep the bank in credit. Mr Griffiths used his personal money to resolve the situation. Bank statements were copied at pages 2 to 26 of the Respondent/Management Company's bundle. A summary was at page 1, showing a total of £93.76 for the year in question
14. The Applicant/Leaseholder's comments in the Applicant/Leaseholder's bundle and at the hearing were that the bank charges appeared to be interest on a personal loan by Mr Griffiths to fund the flat roof repairs which had been carried out in 2007, before Mr. and Mrs Sherring moved in to Flat 2. It was clear from the witness statements in the Applicant/Leaseholder's bundle from the other leaseholders that they were challenging the inclusion in the service charge of the cost of the flat roof works. A disputed service charge should not give rise to a liability for bank charges
15. The Tribunal's findings are that :
 - a. there is no express provision in the Applicant/Leaseholder's lease, copied in the Applicant/Leaseholder's bundle, for the inclusion of bank charges in the service charge
 - b. the wording of paragraph 8 of the fifth schedule of the lease, namely "*The cost of formation of and the administrative costs of running the [Respondent/Management Company] including the cost of auditors for the [Respondent/Management Company]*", is not wide enough to imply that bank charges could be included in the service charge because :
 - by their natural meaning, and in the context of the wording of the other provisions in the lease read as a whole, the words "*the administrative costs of running the [Respondent/Management Company]*" mean "the administrative costs relating to the performance of the Respondent/Management Company's covenants under the lease"
 - the Tribunal accepts as persuasive, and as consistent with the Respondent/Management Company's comments at page 1 of the Respondent/Management Company's bundle, the Applicant/Leaseholder's submission that the bank charges appeared to be interest

on a personal loan by Mr Griffiths to fund the flat roof repairs which had been carried out in 2007

- the funding of a loan for that purpose does not fall within the meaning of “*administrative costs of running the [Respondent/Management Company]*” for the purposes of paragraph 8 of the fifth schedule of the lease
- c. this item is not payable by way of service charge accordingly

Maintenance costs/sinking fund £4,088

16. The Respondent/Management Company’s comments at page 27 of the Respondent/Management Company’s bundle were that it was normal practice in any block of apartments to have a sinking fund which allowed sufficient finance for immediate repairs in order that the tenants could have immediate repairs dealt with if required and avoid the possibility of tenants moving to alternative accommodation if the premises became uninhabitable through, for an example, a leaky roof. That eventuality happened in August 2007 and emergency work was carried out to the flat roof. However, because there were no funds available, a loan of £3,700 was made by Mr Griffiths at that time. Mr Griffiths had been paying 16.84% interest on his personal HSBC account for this money which would need to be refunded in the next accounts. £3,000 was refunded on the 2 April 2009. This was totally unacceptable to Mr Griffiths. Again, due to insufficient funds, £237.50 was owed to Mr Griffiths for accountant’s fees. Because of tenants buying and selling additional costs were now incurred with the additional requirements for asbestos surveys and fire risk assessments. The figures in the 2008 accounts, compared with the actual figures were :

	2008 accounts	2008 actual
Electricity	77.00	73.66
Bank charges	94.00	94.00
Annual return	15.00	15.00
Accountancy fees	525.00	525.00
Maintenance	4,088.00	4,348.00
Postage/stationery	55.00	55.00
Management fees	1,000.00	1,000.00

17. The actual figure of £4,348 for maintenance was made up as follows :

Bayfin Roofing	3,700.00 (invoice 30 July 2007 at page 28)
Asbestos survey	188.00 (invoice 28 February 2008 at page 29)
Fire risk assessment	100.00 (invoice 27 February 2008 at page 30)
Gardening	<u>360.00</u> (invoices at pages 35 to 40)
	4,348.00

18. The Respondent/Management Company commented that there was an under-charge in the accounts of £256.66 which would be carried forward to next year

19. The Applicant/Leaseholder’s comments in the Applicant/Leaseholder’s bundle and at the hearing were as follows :

- a. **roof works** : the cost of the flat roof works had been £3,700 and the work had been completed in 2007. This was clear from the invoice from Bayfin Roofing at page 28 of the Respondent/Management Company’s bundle. Although the invoice stated that the works had been completed on 10 July 2008, the invoice was dated 30 July 2007, and Mr Griffiths’s letter dated 14 August 2007 to Ms P Weatherly, the previous owner of Flat 2,

stated that the works had been completed. Originally, the projected service charge for 2007 had not included the cost of the roof works, as was clear from the accounts for the year ending 30 September 2006 in the Applicant/Leaseholder's bundle. The only maintenance item for 2007 in those accounts was £360 for the gardener. However by the time the 2007 accounts had been completed, the cost of the roof works, £3,700, had been added to the £360 for the gardener, and the total of £4,060 had been included under the heading "maintenance costs/sinking fund" in the accounts for year ending 30 September 2007. However, it now appeared from page 27 of the Respondent/Management Company's bundle that the Respondent/Management Company was trying to include the cost of the roofing works in the 2008 accounts as well. £3,700 should therefore be deleted from the maintenance figure in the 2008 service charge accounts

- b. **reserve(sinking) fund** : the Respondent/Management Company's comments in the Respondent/Management Company's bundle included a comment that there should be a reserve fund. However, it was clear from page 27 of the Respondent/Management Company's bundle that the figure of £4,088 in the 2008 accounts purported to include the £3,700 cost of the roof works, rather than any sum as a contribution to a reserve fund
- c. **asbestos survey** : Mr and Mrs Sherring had moved into Flat 2 on the 28 March 2008. The invoice for the asbestos survey was 28 February 2008. This was at the time of the enquiries made by Mr and Mrs Sherring's solicitors during their purchase of Flat 2, and to have been connected with their purchase, rather than being connected with the maintenance of the Building as such. This appeared to be accepted by the Respondent/Management Company by the statement at page 27 of the Respondent/Management Company's bundle that "Because of tenants buying and selling additional costs are now incurred with the additional requirements for asbestos surveys and fire risk assessments". This item should be deleted from the 2008 service charge accounts
- d. **fire risk assessment** : the invoice was dated 27 February 2008. The same comments applied as in the case of the asbestos survey. This item should be deleted from the 2008 service charge accounts
- e. **gardening** : the gardener appeared to be charging £30 for two hours work every month, according to the invoices in the Respondent/Management Company's bundle. The Applicant/Leaseholder was not challenging the rate of £15 an hour. However, all the gardener appeared to be doing was mowing the two small areas of lawn in front, a little weeding, and a little hoeing, and the state of the weeds and the litter indicated that the charge to the service charge account should be no more than about half an hour a month i.e. £7.50

20. The Tribunal's findings are that :

- a. it is clear from page 27 of the Respondent/Management Company's bundle that the Respondent/Management Company seeks to justify the figure of £4,088 in the 2008 accounts by reference to the cost of the roof works, the asbestos survey, the fire risk assessment, and gardening
- b. the Tribunal accordingly assesses the payability of the figure of £4,080 by reference to each of those items
- c. **roof works** : the Tribunal accepts as persuasive the Applicant/Leaseholder's submissions, for the reasons given by the Applicant/Leaseholder :
 - that the cost of the flat roof works had been £3,700 and that the work had been completed in 2007

- originally, the projected service charge for 2007 had not included the cost of the roof works, as was clear from the accounts for the year ended 30 September 2006 in the Applicant/Leaseholder's bundle
 - the only maintenance item for 2007 in those accounts was £360 for the gardener
 - however by the time the 2007 accounts had been completed, the cost of the roof works, £3,700, had been added to the £360 for the gardener, and the total of £4,060 had been included under the heading "maintenance costs/sinking fund"
 - however, it now appeared from page 27 of the Respondent/Management Company's bundle that the Respondent/Management Company was trying to include the cost of the roofing works, £3,700, in the 2008 accounts as well
- d. accordingly, no part of the maintenance figure of £4,088 in the 2008 service charge accounts is payable by way of service charge in relation to the cost of the roof works
 - e. **reserve fund** : clause 7(2)(vii) of the lease entitles the Respondent/Management Company to include in a service charge "*not only the actual expenditure during the financial year.....but also such reasonably anticipated expenditure of a periodic or recurring nature as the [Respondent/Management Company].....shall in its.....sole discretion allocate to the year in question as being fair and reasonable in the circumstances*"
 - f. by their natural meaning, and in the context of the wording of the other provisions in the lease read as a whole, those words make it clear that in order to include in a service charge a contribution to a reserve fund in any year, the Respondent/Management Company must, first, reasonably anticipate expenditure, and, secondly, make a fair and reasonable allocation to the year in question
 - g. there is no evidence before the Tribunal that the Respondent/Management Company had, when including the figure of £4,088 in the 2008 accounts, anticipated any expenditure or made any allocation to the year
 - h. on the contrary, the Tribunal accepts as persuasive the Applicant/Leaseholder's submissions, for the reasons given by the Applicant/Leaseholder, that the figure of £4,088 in the 2008 accounts purported to include the £3,700 as the cost of the roof works, rather than by way of a contribution to a reserve fund
 - i. accordingly, no part of the maintenance figure of £4,088 in the 2008 service charge accounts is payable by way of contribution to a reserve fund
 - j. **asbestos survey** : the Tribunal accepts as persuasive the Applicant/Leaseholder's submissions, for the reasons given by the Applicant/Leaseholder , that the invoice for the asbestos survey was connected with the Applicant/Leaseholder's purchase, rather than being connected with the maintenance of the Building as such
 - k. there is no express provision in the lease for such an item to be included in the service charge in those circumstances
 - l. accordingly, no part of the maintenance figure of £4,080 in the 2008 service charge accounts is payable by way of service charge in relation to the cost of the asbestos survey
 - m. **fire risk assessment** : again, the Tribunal accepts as persuasive the Applicant/Leaseholder's submissions, for the reasons given by the Applicant/Leaseholder , that the invoice for the fire risk assessment was connected with the Applicant/Leaseholder's purchase, rather than being connected with the maintenance of the Building as such
 - n. there is no express provision in the lease for such an item to be included in the service charge in those circumstances
 - o. accordingly, no part of the maintenance figure of £4,080 in the 2008 service charge accounts is payable by way of service charge in relation to the cost of the fire risk assessment

- p. **gardening** : the Tribunal has taken account of all the Applicant/Leaseholder's comments in that respect and of the state of the garden which was apparent on inspection
- q. however, the Tribunal has also taken account of the fact, as the Tribunal finds from its collective knowledge and experience, and in the absence of any alternative quotations before the Tribunal, that the charge of £30 a month is a reasonable charge not only in terms of the amount of time spent, namely two hours, for the work actually done, but also in terms of the hourly rate
- r. having considered all the evidence, the Tribunal finds that this item is payable by way of service charge
- s. **summary** : the only sum payable by way of service charge in relation to the claimed maintenance figure of £4,080 in the 2008 service charge accounts is the figure for gardening, namely £360

Postage and stationery £55

- 21. The Respondent/Management Company's comments at page 41 of the Respondent/Management Company's bundle were that this was just a general term. It also included the use and maintenance of a computer. The Respondent/Management Company listed envelopes, stamps, paper and telephone. No charges had been made at that stage for general use of office space, desk and carpet. This was an extremely low charge, and should be expanded to show a much higher cost for facilities provided
- 22. The Applicant/Leaseholder's comments in the Applicant/Leaseholder's bundle and at the hearing were that they had received no more than two or three letters a year from the Respondent/Management Company, and no telephone calls. Indeed, there was no telephone number on Mr Griffiths's letters, for example on the letter dated 14 August 2007 to Ms P Weatherly, the previous owner of Flat 2, and it was impossible to reach Mr Griffiths by telephone. Mr Sherring had recently called at the Respondent/Management Company's address to deliver the Applicant/Leaseholder's bundle in these proceedings, and there had been a different company name on the fascia, namely Direct Fireplaces, and there had been a letting board outside
- 23. The Tribunal's findings are that :
 - a. there is no express provision in the Applicant/Leaseholder's lease, copied in the Applicant/Leaseholder's bundle, for the inclusion in the service charge of the cost of the items listed at page 41 of the Respondent/Management Company's bundle
 - b. the wording of paragraph 8 of the fifth schedule of the lease, namely "*The cost of formation of and the administrative costs of running the [Respondent/Management Company] including the cost of auditors for the [Respondent/Management Company]*", is, however, wide enough to imply that the cost of those items could, in principle, be included in the service charge because :
 - by their natural meaning, and in the context of the wording of the other provisions in the lease read as a whole, the words "*the administrative costs of running the [Respondent/Management Company]*" mean "the administrative costs relating to the performance of the Respondent/Management Company's covenants under the lease"
 - the cost of the items listed at page 41 could, in principle, be administrative costs for that purpose, to the extent, but only to the extent, that they relate to the performance of the Respondent/Management Company's covenants under the lease
 - c. however, there is no evidence before the Tribunal how the figure of £55 is calculated

- d. the Tribunal has taken account of the Applicant/Leaseholder's comments that they had received no more than two or three letters a year and no telephone calls
- e. having considered all the evidence, and relying on the Tribunal's collective knowledge and experience, the Tribunal finds that the sum of £5 is payable by way of service charge in respect of this item

Management fee £1,000

24. The Respondent/Management Company's comments at page 42 of the Respondent/Management Company's bundle were that this was a modest fee for Mr Griffiths's time and involvement. In light of the time involvement due to the request for a Tribunal and the future time to be added, this would be grossly understated. Mr Griffiths had a business to run and could not spare the amount of time and effort required. Mr Griffiths also had responsibilities under the Landlord and Tenant Act and Mr Sherring had specifically written to him and stated that he could have substantial fines or imprisonment for not complying. In the 20 years they had had this freehold they had always tried to keep costs to a minimum and because tenants were behind on payments he had personally helped out. His time was used in many ways :

	2008 hours	estimated 2009
conveyancing solicitors on sales	2	2
accountant	3	3
tenants problems	5	5
gardener	1	1
paying bills	2	2
keeping records	2	2
Tribunal attendance	0	11
research and information for Tribunal	0	10
meeting asbestos surveyor	2	2
meeting fire risk assessor	2	2
writing letters and chasing debts	<u>6</u>	<u>6</u>
	25	46
£40 an hour	£1,000	£1,840

25. The Applicant/Leaseholder's comments in the Applicant/Leaseholder's bundle and at the hearing were that most of the items in the list at page 42 or the Respondent/Management Company's bundle were personal items relating to, and payable, if at all, by, individual tenants, rather than items which could be included in the service charge, namely conveyancing solicitors on sales, tenants problems, meeting asbestos surveyor, meeting fire risk assessor, and writing letters and chasing debts. In any event, letters to tenants often sought to include in the letters themselves an individual charge, such as the £55 charge for "administration letter and postage" referred to in the letter to Mr Sherring dated 7 April 2009 in the Applicant/Leaseholder's bundle. So far as the remaining items were concerned, it was not clear why Mr Griffiths was claiming to have spent three hours in relation to the accountant, one hour in relation to the gardener, two hours in relation to paying bills, and two hours in connection with keeping records, or how those hours had been spent in each case. The suggested hourly rate of £40 was totally excessive. The proposed management fee was higher than the Applicant/Leaseholder's council tax

26. The Tribunal's findings are that :

- a. there is no express provision in the Applicant/Leaseholder's lease, copied in the Applicant/Leaseholder's bundle, for the inclusion in the service charge of a management fee or of the cost of the items listed at page 42
- b. the wording of paragraph 5 of the fifth schedule of the lease, namely "*the cost of employing such professional advisers and agents as shall be reasonably required in connection with the management of the Building*", is not wide enough to imply that a management fee by the Respondent/Management Company, or by Mr Griffiths, or the cost of the items listed at page 42, can be included in a service charge, because there is no evidence before the Tribunal that either the Respondent/Management Company or Mr Griffiths has been appointed as, or indeed could reasonably be appointed as, a professional adviser or agent for that purpose
- c. the wording of paragraph 8 of the fifth schedule of the lease, namely "*The cost of formation of and the administrative costs of running the [Respondent/Management Company] including the cost of auditors for the [Respondent/Management Company]*", is not wide enough to imply that a management fee by the Respondent/Management Company or Mr Griffiths or the cost of the items listed at page 42 could be included in the service charge because :
 - by their natural meaning, and in the context of the wording of the other provisions in the lease read as a whole, the words :
 - i. "*the administrative costs of running the [Respondent/Management Company]*" mean "the administrative costs relating to the performance of the Respondent/Management Company's covenants under the lease"
 - ii. "*costs*" means "monetary expenses incurred"
 - all the items listed at page 42 are purported charges by Mr Griffiths to the tenants for time spent by him, but there is no evidence before the Tribunal that any of that time is, or has become, an administrative cost of running the Respondent/Management Company within the meaning of paragraph 8 of the fifth schedule of the lease
- d. in any event, the Tribunal accepts as persuasive of the Applicant/Leaseholder's submissions that :
 - the items listed on page 42 are, respectively, either personal items relating to, and payable, if at all, by, individual tenants, rather than items which could be included in the service charge, or lacking in evidence about the amount of time allegedly spent
 - the suggested charging rate of £40 an hour is lacking in evidence about its calculation and excessive
- e. having considered all the evidence, the Tribunal finds that this item is not payable by way of service charge

Service charge for the year 2008 to 2009

Bank charges £100

27. There were no additional comments in the Respondent/Management Company's bundle
28. The Applicant/Leaseholder's comments were the same as their comments in relation to the previous year
29. The Tribunal finds that this item is not payable by way of service charge, for the same reasons as given in relation to the corresponding item in the previous service charge year

Maintenance costs/sinking fund £4,250

30. There were no additional comments in the Respondent/Management Company's bundle
31. The Applicant/Leaseholder's comments at the hearing were that the suggested figure of £4,250 presumably included a figure for the gardener, and presumably that figure was £360 as in previous years. There was no indication what the balance of £3,890 was for. If it had been intended to be a contribution to a reserve fund then the Applicant/Leaseholder would have expected the Respondent/Management Company to have given notification that this was to be the case, with details of how the amount was made up and details of the proposed future expenditure for which the reserve fund was going to be built up. The Applicant/Leaseholder had received no such notification
32. The Tribunal's findings are that :
 - a. in the absence of any evidence to the contrary, the Tribunal finds that this item includes £360 for gardening as in previous years
 - b. the Tribunal finds that £360 is payable by way of service charge in that respect, for the same reasons as given in relation to the corresponding item in the previous service charge year
 - c. in relation to the balance of £3,890 the Tribunal finds that there is no evidence before the Tribunal that the Respondent/Management Company had, when including that figure in the 2009 accounts, incurred any actual expenditure in that respect, or anticipated any expenditure or made any allocation to the year by way of reserve fund in that respect for the purposes of clause 7(2)(vii) of the lease
 - d. accordingly, the Tribunal finds that only the sum of £360 in relation to gardening is payable by way of service charge in respect of the claimed figure of £4,250

Postage and stationery £60

33. There were no additional comments in the Respondent/Management Company's bundle
34. The Applicant/Leaseholder's comments were the same as their comments in relation to the previous year
35. The Tribunal finds that only the sum of £5 in relation to this item is payable by way of service charge, for the same reasons as given in relation to the corresponding item in the previous service charge year

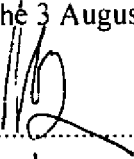
Management fee £1,200

36. There were no additional comments in the Respondent/Management Company's bundle
37. The Applicant/Leaseholder's comments were the same as their comments in relation to the previous year. So far as the suggested number of hours dealing with the present Tribunal proceedings were concerned, the Applicant/Leaseholder was making an application under section 20C of the Landlord and Tenant Act 1985
38. The Tribunal finds that this item is not payable by way of service charge, for the same reasons as given in relation to the corresponding item in the previous service charge year

Section 20C

39. There were no comments in this respect in the Respondent/Management Company's bundle
40. The Applicant/Leaseholder's comments at the hearing were that, as evidenced by the letters dated the 6 November 2008, and the 26 November 2008 in the Applicant/Leaseholder's bundle, he had tried to resolve matters with the Respondent/Management Company without recourse to the Tribunal. However, there had been either no reply or only unhelpful replies, and the Applicant/Leaseholder had no alternative but to apply to the Tribunal
41. The Tribunal's findings are that :
- a. the Tribunal accepts as persuasive the Applicant/Leaseholder's submissions that the Applicant/Leaseholder had made reasonable attempts to resolve matters without recourse to the Tribunal
 - b. in any event, the Tribunal has found that substantial amounts are not payable by way of service charge
 - c. in all the circumstances, the Tribunal makes an order that the costs incurred by the Respondent/Management Company in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder

Dated the 3 August 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor