

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00HN/LSC/2010/0021, CHI/00HN/LSC/2010/0022, and  
CHI/00HN/LSC/2010/0023**

**REASONS**

**Application** : Sections 19 and 27A Landlord and Tenant Act 1985 as amended (“the 1985 Act”) and section 158 and schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) (transferred from Bournemouth County Court, claim numbers 9C101210, 9C101211, and 9C101213)

**Applicant/Landlord** : Sinclair Gardens Investments (Kensington) Ltd

**Respondent/Leaseholder** : Mrs Jayne Meryl Gormley-Lake

**Premises** : Flats 2, 4, and 10, 115-117 Richmond Park Road, Bournemouth, Dorset, BH8 8TE

**Building** : the building comprising the Premises and 9 other flats

**Date of Bournemouth County Court Transfer Order** : 29 December 2009

**Date of Provisional Directions** : 17 February 2010

**Date of Subsequent Directions** : 10 March 2010

**Date of Hearing** : 30 June 2010

**Venue** : Mirabelle Suite, Royal Bath Hotel, Bath Road, Bournemouth, Dorset, BH1 2EW

**Appearances for Applicant/Landlord** : Mr Mark Kelly, director of First Management Ltd, trading as Hurst Managements, and Cullenglow Ltd, trading as Princess Insurance Agencies

**Appearances for Respondent/Leaseholder** : no attendance or representation

**Also in Attendance** : Mrs S Jennings and Mr G Taylor as observers

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr M Ayres FRICS, and Mr J Mills

**Date of Tribunal’s Reasons** : 30 June 2010

## Introduction

1. The Respondent/Leaseholder is the registered proprietor of each of the 3 flats comprising the Premises
2. By 3 claim forms lodged with Chichester County Court on 8 June 2009 the Applicant/Landlord claimed from the Respondent/Leaseholder the following sums in respect of each of the 3 flats comprising the Premises :
  - a. rent 495.89
  - b. service charge 242.09
  - c. advance service charge 294.30
  - d. insurance rent 133.71
  - e. administrative service charge 129.94
  - f. total 1,295.93
  - g. court fee 75.00
  - h. solicitor's costs 80.00
  - i. total 1,450.93
3. By a defence in each action dated 24 June 2009 the Respondent/Leaseholder stated that the Applicant/Landlord had bought the freehold only in January 2009 and therefore was not entitled to claim back rents for 2007 and 2008. Similarly, it was extortionate and wholly unreasonable to claim approximately £1,300 a year. Very little in the way of maintenance was being done at the Building. The Applicant/Landlord was not fulfilling its duty and obligations to the Respondent/Leaseholder. She had not received any audited accounts. The Applicant/Landlord was failing in its duty of care to the Respondent/Leaseholder. She wished to make a counterclaim for £2,750 for maintenance to the gardens, common parts, lighting, mending the front door five times, repairing the lock three times, cleaning the Building on a regular basis during 2007 and 2008, sweeping common parts regularly, sorting out bins, removing dog faeces and litter regularly, and hedge cutting
4. By orders each dated 28 July 2009 each action was transferred from the Chichester County Court to the Bournemouth County Court
5. By a reply and defence to counterclaim dated 18 August 2009 the Applicant/Landlord stated that :
  - a. no demands had been made by the Applicant/Landlord's predecessors in title in respect of either ground rents or service charges. The only service charges being demanded were the excess service charge for the year ended 24 December 2008, namely the insurance premium, and the advance service charge for the year ended 24 December 2009. The Building had been maintained in accordance with the terms of the lease since the freehold was acquired by the Applicant/Landlord on 8 December 2008. The works undertaken since 25 December 2008 included grounds maintenance, cleaning and general maintenance. Audited accounts would be sent to each tenant at the end of the accounting year, namely 24 December 2009
  - b. the Applicant/Landlord had not entered into any contract with the Respondent/Leaseholder to carry out any maintenance to the Building. The Applicant/Landlord had not received any invoices for works undertaken by the

Respondent/Leaseholder. The Applicant/Landlord had received no previous notification of any of the alleged breaches of covenant. The Applicant/Landlord had no liability in respect of any contractual arrangements between the Respondent/Leaseholder and the previous landlord. Neither the managing agent nor the Applicant/Landlord had previously been advised of any loss or damage sustained by the Respondent/Leaseholder. The Respondent/Leaseholder was put to proof of the allegation of loss and the amount claimed

6. By orders each dated 29 December 2009 the Bournemouth County Court made the following order in relation to each action :
  - a. the following claims be transferred to the Tribunal :
    - service charge 242.09
    - advance service charge 294.30
    - insurance rent 133.71
    - administrative service charge 129.94
  - b. the disposal of the remainder of the claim be stayed without allocation pending the determination of the Tribunal
  - c. the costs of the order be costs in the case
7. By a letter dated 15 March 2010 from the Applicant/Landlord's solicitors it was confirmed that the only issues before the Tribunal were those transferred to the Tribunal from the Bournemouth County Court

#### **Section 19(1) of the 1985 Act**

8. Section 19(1) provides as follows :
  - (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**

9. The material documents before the Tribunal are those referred to in these reasons

#### **The lease**

10. The only copy lease supplied to the Tribunal relates to flat 2. Mr Kelly confirmed at the hearing that the leases relating to flats 2, 4 and 10 are in similar terms and the Tribunal has proceeded on that basis
11. The material parts of the lease are as follows :

**Clause 1(1)**

**Definitions**

*"the Term" means the term of 125 years from 25 December 2005*

**Third schedule part 1**

*covenants by the lessee*

*(b) [to pay rates]*

*(c) to comply.....with the requirement of any competent authority in respect of the flat or the user thereof*

*(d) [to deliver to the lessor copies of notices from any competent authority]*

*(n) to pay to the lessor all costs charges and expenses including solicitors costs and surveyors fees..... incurred in connection with (i) any notice under section 146 of the Law of Property Act 1925 and notwithstanding the forfeiture may be avoided otherwise than by relief granted by the court (ii) any schedule of dilapidations served during or after the end of the term and (iii) the granting of any consent under this lease*

*(o) to pay the Maintenance Charge to the lessor within 14 days of receipt of the demand*

**Fourth schedule**

*covenants by the lessor*

*2 To keep in good and substantial repair and condition*

*(a) [roof structure foundations gutters pipes chimneys and common parts]*

*(b) [entrances porches hallways passages landings and staircases]*

*(c) [driveway footpath and bin area and common parts of the estate]*

*(d) [boundary walls and fences]*

*(e) [communal security systems and aerials]*

*(f) [car park]*

*5 [To insure the Building]*

*10 (a) [To keep books of account]*

*10 (b) [To send to each lessee as soon as possible after the 25 December in each year a summary of expenditure, certified by an accountant, for the year up to 25 December, a notice of the lessee's liability for that year under the sixth schedule to the lease, and a notice in writing of the amount due from the lessee under clause 2 of the six schedule to the lease]*

**Sixth schedule**

### *the Maintenance Charge*

*1 The Maintenance charge payable by the lessee shall be a yearly sum in respect of each year ending on the 24 December equal to one 12th of the total of the following:*

- (a) the cost to the lessor of complying with the covenants on the part of the lessor in paragraphs 2, 3,4, 5, 9 and 10 of the Fourth Schedule including the employment of contractors in connection therewith*
- (b) the fees and disbursements paid to managing agents (if any) for the management of the estate and the provision of services therein*
- (c) the costs (including the costs of the lessor's auditor) of ascertaining the Maintenance Charge and the keeping of any necessary books of account*
- (d) a contribution fixed annually by the lessor to provide a reserve fund to cover accruing and anticipated expenditure in respect of the compliance of the covenants on the part of the lessor*
- (e) the hire charge or other expenses paid by the lessor in respect of any communal refuse bins provided for the storage of household refuse of the lessees owners and occupiers of the flats in the Building and the repair and renewal thereof*
- (f) all other expenses (if any) incurred by the lessor in and about the maintenance and proper and convenient management and running of the estate*
- (g) [VAT]*

*2 The Maintenance Charge shall be paid :*

- (a) by payments on account of the sum conclusively estimated by the lessor as being the likely Maintenance Charge for the year in question by two equal payments on the 24 June and the 25 December in each year*
- (b) the balance (if any) within 21 days of the service on the lessee of the certificate of the lessor's auditor as to [sic] the total referred to in paragraph 1 of this schedule in respect of the preceding year of the term*

*3 The lessor's certificate as to [sic] the amount due to the lessor shall be conclusive but otherwise any dispute between the parties shall be determined by the Surveyor*

## **12. Inspection**

- 13. The Tribunal inspected the Building on 30 June 2010, on the morning of the hearing. Also present was Mr Kelly. The Building was a 2-storey, brick-faced block of 12 flats with 2 dormer windows at each of the front and rear, and a tiled, pitched roof. It appeared to be about 5 years old. The windows, fascias, soffits, gutters and downpipes were UPVC. There was a close-boarded fence on each side and at the rear, with a wooden bin store at the front, and a wooden bicycle store at the rear. There was a tarmac drive with one tiled/paved parking space at the front, 11 tiled/paved parking spaces at the rear, and bushes at the borders
- 14. The exterior of the Building appeared to be in good condition
- 15. There was an entryphone system, but the Tribunal was unable to gain access through the outer communal door to inspect the internal communal areas

**Applicant/Landlord's schedule of service charges in issue 15 March 2010**

16. The schedule listed the following figures

*Service charge expenditure for the year ending 25 December 2008*

insurance £2905.10

*Advance service charge expenditure for the year ending 25 December 2009*

repairs	600
gardening and cleaning	1,600
electricity	250
entryphone	200
audit	145
valuation/risk assessment	175
insurance	3,209
Hurst Managements' management fee	3,243
reserve fund	<u>850*</u>
total	10,272

\* (external redecorations: £250; internal hall redecorations : £600)

**Statement by Mr Kelly 4 March 2010**

17. Mr Kelly stated that he was a director of First Management Ltd, trading as Hurst Managements, which managed the Building on behalf of the Applicant/Landlord. He was also a director of Cullenglow Ltd, trading as Princess Insurance Agencies

18. The Building comprised 12 flats, all let on long leases. The lease of flat 2 was in common form with the leases of the other flats in the Building

*Administrative service charge £129.94*

19. Mr Kelly stated that under paragraph (n) of the third schedule part I of the lease the Respondent/Leaseholder was liable for all expenses incurred by the Applicant/Landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925
20. Incidental to the service of such a notice the managing agents sent a letter before action to the tenant. The tenant was reasonably given every opportunity to pay the arrears before the incurring of the more substantial costs of the actual service and preparation of a section 146 notice. If there was no response then solicitors were instructed in connection with the section 146 notice. The solicitors did not immediately serve a notice but they too sent a further letter before action giving the tenant yet a further opportunity to pay the arrears before the costs of the section 146 notice were incurred
21. It was a statutory requirement to serve a notice under section 166 of the 2002 Act before serving a section 146 notice. Therefore the obtaining of a determination from the County Court by way of a County Court judgement that the service charge was due and payable was incidental to the service of a section 146 notice
22. Also, under clause (b) [sic] of part I of the third schedule to the lease the Respondent/Leaseholder was required to indemnify the Applicant/Landlord in connection with compliance with statute
23. The letter before action involved the managing agents entering the tenant's details and arrears details from the Applicant/Landlord's records into a standard letter and posting that letter. The managing agents charged £15.82 plus VAT
24. Instructing solicitors involved the extraction of all documentation concerning the tenant's details and payment history including details of the arrears, copying of correspondence, copying the lease, e-mail instructions, liaising with solicitors, paying legal fees, and responding to enquiries after instructions had been given
25. The figure of £129.94 was made up as follows

12 February 2009	section 166 notice	6.00
13 February 2009	letter before action	18.19
22 April 2009	instructing solicitors	<u>105.75</u>
Total		129.94

*Service charge expenditure in 2008 £242 09*

26. The sole expenditure in the year ended 24 December 2008 was £2,905.10 for the insurance of the Building. Each flat owned by the Respondent/Leaseholder had a liability of 8.3333%, which equated to £242 09

*Service charge expenditure in 2009 £294.30*

27. Mr Kelly stated that the interim service charge invoiced to the Respondent/Leaseholder for each of her flats for the year ended 24 December 2009 was 8.3333% of £10,272 which equated to £294.30 [sic]. The actual service charge expenditure for the year was not an issue in the County Court action

**Endurance certificate of buildings insurance**

28. The certificate included the following details :
- a. agent : Princess Insurance Agencies
  - b. insured : the Applicant/Landlord
  - c. property insured : the Building
  - d. sum insured : £1,320,000
  - e. period covered : 347 days to 20 November 2009
  - f. premium paid : £2,905.10

**Certified Statement of service charges for period ended 24 December 2009**

29. The certified statement of actual expenditure showed the following sums :

Repairs and general maintenance	1,618.58
Gardening and cleaning	1,400.00
Common electricity&/or TV booster	153.29
Entryphone or VDU	0.00
Independent accountant's fee	0.00
Valuation/risk assessment	408.99
Water authority rates	44.00
Terrorism insurance	93.51
Buildings insurance	1,739.50
Management fee	3,381.00
Transfer to reserve fund	<u>0.02</u>
Total	8,838.89



Service charges previously billed	<u>10,176.35 [sic]</u>
Surplus transferred to reserve	1,337.46

**Further statement by Mr Kelly 28 April 2010**

30. Mr Kelly made the following comments about advance service charge expenditure

*Cleaning and gardening*

31. Caledonian Cleaning Services (UK) Ltd charged £30 for each weekly visit. They had liability insurance and required minimum supervision. Cleaning included removing rubbish from the communal grounds, vacuuming all carpeted areas in the Building, dusting and removing cobwebs, cleaning internal glass on doors, polishing finger plates, and deodorising communal areas in accordance with the cleaning specification attached to the attached letter from Caledonian Cleaning Services (UK) Ltd dated 27 February 2009, which also stated that the initial clean had been carried out at the agreed cost of £50. Additional monthly duties (undertaken at no further charge to the tenants) included sweeping the car park and communal grounds, cleaning windows to communal internal area, tidying the bin store, and washing and disinfecting the bin store as necessary
32. The managing agents also required cleaners and gardeners as part of their fee to report to them any items of maintenance that they might discover in their regular attendances on site to reduce the number of visits by the managing agents

*Management services*

33. The Management services which could be required in any service charge year were as follows :
- a. collecting service charges
  - b. preparing statements of collections for the client
  - c. collection of arrears
  - d. proceedings diary
  - e. early settlement of arrears
  - f. checking that tenants' data is correct
  - g. prehearing meetings
  - h. compiling computerised records
  - i. organising payment of expenditure for which the Applicant/Landlord is liable
  - j. providing information to auditors
  - k. producing service charge accounts
  - l. maintaining records of the Building
  - m. maintaining books of account
  - n. responding to all correspondence and telephone calls received in connection with the Building
  - o. periodic inspections of the exterior of the Building and common parts; this was

undertaken at least three times each year. Property inspection reports attached were dated 27 March 2009, 23 July 2009 and 2 October 2009

- p. organising and general maintenance of the Building as and when required
  - q. arranging statutory reports, insurers inspections, and insurance revaluations
  - r. liaising with the insurance agent
  - s. organising regular contracts
34. Mr Kelly also listed other management duties for which additional fees were charged, including dealing with and settling disputes between third parties, dealing with applications for alterations and deeds of variation, and dealing with breaches of the lease
35. The management fees were reasonable for the services provided. The fee for each flat for 2009 was £245 plus VAT which was a fixed fee for each flat for each year irrespective of the amount of work undertaken, in accordance with the RICS Residential Management Code, and was not a percentage of the expenditure
36. No additional management fees were charged in relation to the Building except by way of administration costs

#### *Terrorism insurance*

37. The premium of £93.51 was for cover of £1,022,467

#### *Insurance*

##### 38. *Premiums*

39. The premiums paid in each year were reasonable premiums negotiated in the normal course of business. The premium paid on 8 December 2008 was £2,905.10 for cover of £1,320,000 for the period from 8 December 2008 to 20 November 2009. The premium paid in November 2009 was £2182.97 for cover of 1,022.467 for the period 20 November 2009 to 19 November 2010.

40. The Applicant/Landlord was not required to effect the cheapest insurance, but to insure in the normal course of business with an insurer of repute. The test was whether the premium was reasonably incurred : section 19 of the 1985 Act, **Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited**, and **Forcelux v Sweetman**

##### 41. *Normal course of business*

42. Princess Insurance Agencies were registered with the Financial Services Authority. The Applicant/Landlord insured on the basis of the best information available at the time. Princess Insurance Agencies prepared accurate portfolio schedules for each aspect of cover for the Building. The sum insured was updated in accordance with the RICS buildings costs index and periodic physical revaluations. Princess Insurance Agencies prepared a 5-year claims history to enable insurance companies to assess the risk profile. Princess Insurance Agencies used H W

Wood International to research the insurance market

43. In 2006 the current insurer declined to continue the current insurance at the same premium. H W Wood International went to the market. A schedule of quotes received in March 2009 was attached. H W Wood International established that Endurance, an “A+” insurer, would write the business on the same terms and conditions as the previous insurer
44. A sample of properties in the portfolio of the Applicant/Landlord was tested each year to ensure that they were reasonable and in line with premium rates currently available in the market
45. The annual renewals process was therefore conducted in the normal course of business
46. *One insurer*
47. The Applicant/Landlord was entitled to require its entire portfolio to be insured with one insurer on standard terms and conditions with the same renewal dates to ensure that adequate cover is in force for all the buildings owned by it : **Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited, and Viscount Tredegar v Harwood**

*Advance service charge*

48. It was reasonable for the Applicant/Landlord to make provision for sums to cover likely expenditure under the Applicant/Landlord’s covenants in the lease. The sums provided for in the advance service charge were reasonable

**Letter from the Respondent/Leaseholder**

49. In an undated letter attached to Mr Kelly’s supplemental statement the Respondent/Leaseholder stated that the Applicant/Landlord’s list of charges was lengthy, complicated, inexplicable and extortionate. She was amazed that the Applicant/Landlord was proposing to carry out major repair works. The Building was only 3 [sic] years old, and did not need any of the proposed work. It might need doing in about 2 years’ time. It did not need much maintenance, much of which had been done by herself and her husband in any event. The cleaner came once a week to vacuum 3 small floors. A gardener came every few months for a few hours to lop bushes. The service charges should be at most £400 to £500 a year

**Authorities**

50. In **Viscount Tredegar v Harwood** [1929] AC 72 the tenant was obliged to insure her house in the Law Fire Office or in some other responsible insurance office to be approved by the landlord. The tenant insured instead with another company. The landlord had a very large number of other houses and insisted that for estate management reasons it was essential that all his tenants should insure in the same office

51. The House of Lords held that the primary obligation on the tenant was to insure with the Law Fire Office; that the landlord had an absolute right to withhold his approval of an alternative office without giving reasons; and that, in any event, the grounds of the landlord's disapproval were reasonable
52. Lord Shaw of Dunfermline stated that with so many properties the difficulty for the landlord was to check for failure of renewals, and the point would become very complex if they were insured in many different offices. With a simple working arrangement with one office simplicity and accuracy were promptly secured
53. In **Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited** [1996] EWHC Admin 50 the landlord, by virtue of provisions in the lease, required the tenants' management company to insure a residential block of flats with Commercial Union, whose premium were about double that of another insurer
54. However, the Court of Appeal held that the question was not whether the insurance was the cheapest available but whether the insurance was arranged in the normal course of business and whether the expenditure was reasonably incurred, and the Court of Appeal decided, on the facts of the case, that the amounts quoted by Commercial Union were neither unreasonable nor excessive and were negotiated in the ordinary course of business, and the Court of Appeal dismissed the tenant's appeal
55. In **Forcelux v Sweetman** [2001] 2 EGLR 173 the landlord insured a house which had been converted into 2 flats. The tenants were liable to pay the premiums by way of service charge. The landlord used a broker, and insured all its properties under one policy. The tenants produced quotes for similar cover at premiums which were about half the price
56. The Lands Tribunal held that :
  - a. the relevant question under section 19 of the 1985 Act was not whether costs were "reasonable" or the expenditure the cheapest available, but whether the costs were "reasonably incurred"
  - b. in order to answer that question it had to be decided :
    - whether the landlord's actions were appropriate and properly effected in accordance with the lease, the RICS Code, and the 1985 Act, and
    - whether the amount charged was reasonable in the light of that evidence, because if that did not have to be considered it would be open to any landlord to plead justification for any particular figure on the ground that the steps taken by the landlord justified the expense without properly testing the market
  - c. cover for commercial landlords was more expensive than that available for owner-occupiers
  - d. however, the lease required the landlord to insure and the landlord's block policy was competitively obtained in accordance with market rates
  - e. the cost of the premiums was reasonably incurred
  - f. there was no evidence that the costs were excessive

- g. the quotes obtained by the tenants were not on a like-for-like basis, and, while the cover might have been comparable, the tenants were in a different category from a commercial landlord, and a direct comparison was not appropriate

### **The hearing and the Tribunal's decision and reasons**

57. In relation to each matter in issue before the Tribunal, Mr Kelly's additional oral evidence and submissions at the hearing, and the Tribunal's decision and reasons in each case, having taken account of all the evidence, including the comments of the Respondent/Leaseholder, were as follows

#### *Insurance premium £242.09*

58. *Mr Kelly's additional oral evidence and submissions*

59. Mr Kelly said that the figure of £242.09 was one twelfth of the premium of £2,905.10. The whole of the premium was included in the service charge account of actual expenditure for the year ending 24 December 2008, despite the fact that the insurance cover was mostly for the accounting year ending on 24 December 2009, because the premium had been paid by the Applicant/Landlord on 30 November 2008, which was the renewal date for insuring all the properties in the Applicant/Landlord's portfolio

60. *The Tribunal's findings*

61. The Tribunal accepts as persuasive the evidence and submissions by Mr Kelly in his written statements, and, having taken account of the decisions in the decided cases, and of the fact, as the Tribunal finds, that there has been no specific challenge by the Respondent/Leaseholder to this part of the Applicant/Landlord's claim, the Tribunal finds that this sum is payable by the Respondent/Leaseholder by way of service charge in relation to each of her flats

#### *Advance service charge £294.30*

62. *Mr Kelly's additional oral evidence and submissions*

63. Mr Kelly said that the sum of £294.30 was the first of 2 equal instalments of one twelfth (i.e. £588.58) of £7,063, being the advance service charge of £10,272 for the year ending 24 December 2009 minus the budgeted insurance premium for that year, namely £3,209, in respect of which the separate claim of £133.71 was being made

64. Mr Kelly submitted that the Tribunal should consider the reasonableness of the individual items comprising the sum of £7,063 in the light of the actual expenditure for the year in question, as shown in the statement of service charges for the year ending 24 December 2009, although Mr Kelly appreciated that in doing so the Tribunal would not be considering the reasonableness as such of that actual expenditure, as the reasonableness or otherwise of that actual expenditure was not before the Tribunal in these proceedings

65. The £7,063 comprised the following items:
66. *Repairs £600*
67. Mr Kelly said that the actual expenditure for the year ending 24 December 2009 was £1,618.58, and the budgeted figure for the following year was £1,000, so that the budgeted figure of £600 was reasonable
68. *Gardening and cleaning £1,600*
69. Mr Kelly said that the actual expenditure for the year ending 24 December 2009 was £1,400, which had been incurred only after the start of the cleaning contract in March 2009, and the budgeted figure for the following year was also £1,600, so that the budgeted figure of £1,600 for the 12 month period was reasonable
70. *Communal electricity and/or TV booster £250*
71. Mr Kelly said that the actual expenditure for the year ending 24 December 2009 was £153.29, and the budgeted figure for the following year was £200, so that the budgeted figure of £250 was reasonable
72. *Entryphone £200*
73. Mr Kelly said that the actual expenditure for the year ending 24 December 2009 was nil, and the budgeted figure for the following year was £200. However, it was reasonable to provide for possible expenditure because of the possibility of a call-out during each year, so that the budgeted figure of £200 was reasonable. In any event, any surplus would be transferred to reserve which would build up a fund in case of any larger expenditure in that respect in any year
74. *Independent accountant's fee £145*
75. Mr Kelly said that he did not know why the actual expenditure for the year ending 24 December 2009 was nil, but that it might have been because the Applicant/Landlord had only acquired the freehold of the Building in December 2008. The budgeted figure for the following year was £145, so that the budgeted figure of £145 for the year in question was reasonable as a budget
76. *Valuation risk assessment £175*
77. Mr Kelly said that the actual expenditure for the year ending 24 December 2009 was £408.99, so that the budgeted figure of £175 was reasonable. The valuation was carried out in-house by Hurst Managements. The sum of £408.99 had been invoiced by Princess Insurance Agencies to the Applicant/Landlord. In answer to questions from the Tribunal Mr Kelly was unable to

explain why Princess Insurance Agencies had sent an invoice to the Applicant/Landlord for an assessment carried out in-house by Hurst Managements. He said that the two companies were in the same group of companies as the Applicant/Landlord, with a common holding company, although they were separate trading entities. Mr Kelly said that he was not a director of the Applicant/Landlord. He said that Princess Insurance Agencies received commission from the insurance company in relation to insurances effected through their agency. That commission was not passed on to the Respondent/Leaseholder, but the Respondent/Leaseholder benefited from the revaluation because the building sum insured was reduced as a result of the revaluation, which in turn reduced the premium payable by the Respondent/Leaseholder

78. *Management fee £3,243*

79. Mr Kelly said that in respect of every one of the 5,000 or so properties under their management Hurst Managements charged a flat fee for each flat in accordance with RICS guidelines, rather than a percentage of the annual expenditure. The amount of the fee depended on the size of the block, the number of flats, and the location. The smaller the block the larger the fee for each flat. In central London their fees were in the order of £390 a flat. They charged less for blocks in the Midlands and the north of England than for blocks in the south and south east. The Building was at the smaller end of the blocks under their management. For the Building they charged £245 a flat. The £3,243 equated to 12 times £245 [sic] plus VAT. The actual expenditure for the year ending 24 December 2009 was £3,381 because the fees had been revised upwards in March 2009. Hurst Managements managed every property owned by the Applicant/Landlord. There was no tendering process for the appointment of Hurst Managements as such

80. The Tribunal put it to Mr Kelly that, taking account of :

- a. all the items of management duties and work set out in Mr Kelly's statement, and the fact that there is before the Tribunal evidence of 3 inspections of the Building undertaken on behalf of Hurst Managements
- b. Mr Kelly's oral evidence about the level of fees normally charged by Hurst Managements
- c. however, the Tribunal's collective knowledge and expertise in these matters
- d. the size and location of the Building
- e. the fact that the Building is only some 5 years old, with UPVC windows and fittings and that accordingly Hurst Managements' responsibility for external decorations and repairs is largely limited to the treatment of fences and bin and bicycle stores
- f. the fact that the drives are laid to tarmac, that the parking spaces are tiled/paved, and that the borders are laid to bushes, and that accordingly the amount of external maintenance for which Hurst Managements are responsible is limited
- g. the fact that there is no evidence that Hurst Managements' responsibility for maintenance of the internal communal areas is greater than that the Tribunal would regard as normal for a block of that size
- h. in any event the fact that Hurst Managements employ cleaners on a regular contract to carry out internal common parts cleaning and regular routine garden maintenance and to report any defects to Hurst Managements, that, according to Mr Kelly's evidence, they require minimum supervision, and that the cleaners' fees are paid by the tenants as a

- separate item through the service charge
- i. the fact that Hurst Managements carry out a periodic in-house insurance valuation, but that a separate charge is payable in that respect by the tenants through the service charge
  - j. the fact that Princess Insurance Agencies arrange the insurance of the Building
- the Tribunal would expect a budgeted management fee for the Building to be in the region of about £150 a flat, plus VAT
81. Mr Kelly said that Hurst Managements did not have any management fees which were that low
  82. The Tribunal then put it to Mr Kelly that if, contrary to the RICS guidance in that respect, a management fee for the Building were to be fixed by way of a percentage of annual expenditure, that percentage, taking account of all the factors already mentioned, would be no more than 15%, which, in relation to the advance service charge for the Building of £10,272 (including insurance premium) for the year ending 24 December 2009, would give a figure of £1,540.80, which would equate to £128.40 for each of the 12 flats, and, although the Tribunal was not suggesting that the management fee should be fixed by that method, it nevertheless provided a useful check on the Tribunal's suggested figure of £150 a flat plus VAT
  83. Mr Kelly said that he did not know of any agents who calculated fees on a percentage basis
  84. *Reserve fund contribution £850*
  85. Mr Kelly said that in estimating that figure Hurst Managements had taken account of the fact that external decoration including the fences, bin and cycle stores had to be carried out every 5 years, and that 2010 was accordingly the first decorating year in that cycle. The figure, as a budgeted figure, was a reasonable one
  86. *The Tribunal's findings*
  87. *Valuation risk assessment £175*
  88. In relation to the reasonableness of the budgeted figure of £175, the Tribunal accepts as persuasive the evidence and submissions by Mr Kelly in his written statements and in his oral evidence, and, having taken account of the decisions in the decided cases, and of the fact, as the Tribunal finds, that there has been no specific challenge by the Respondent/Leaseholder to this part of the Applicant/Landlord's claim, the Tribunal finds that this sum is payable by the Respondent/Leaseholder by way of estimated service charge in relation to each of her flats
  89. The Tribunal does however note that, as Mr Kelly acknowledged in oral evidence, there is a discrepancy between his evidence that the valuation risk assessment was carried out in-house by Hurst Managements, and his evidence that the actual expenditure by the Applicant/Landlord in that respect for the year ending 24 December 2009 related to an invoice from Princess Insurance Agencies. Although this does not directly concern the Tribunal in these proceedings, because the Tribunal is concerned only with the figures in the advance service charge of £10,272 for that year, nevertheless the Applicant/Landlord may well wish to review this item



in assessing the amount of the service charge in relation to the actual expenditure for the year ending 24 December 2009

90. *Management fee £3,243*

91. The Tribunal finds, for reasons put to Mr Kelly at the hearing, that a reasonable fee in all the circumstances would be no more £150 a flat plus VAT, namely a total for the 12 flats of £1,800 plus VAT at the rate applicable at the appropriate date. There is no direct evidence before the Tribunal about that VAT rate. However, the Tribunal notes that the figure for management fees in the actual expenditure for the year ending 24 December 2009 was £3,381, that Mr Kelly's figure of £245 a flat plus VAT equates to £2,940 for 12 flats plus VAT, and that £2,940 plus VAT at 15% amounts to £3,381. The Tribunal therefore infers that the rate of VAT applicable at the appropriate date was 15%, and that VAT at 15%, namely £270, should be added to the sum of £1,800, making a total found to be reasonable by the Tribunal under this heading of £2,070. However, if the Tribunal is wrong in respect of the applicable VAT rate, then appropriate adjustments will have to be made to the Tribunal's figures set out later in these reasons

92. *The remaining items comprised in the sum of £7,063*

93. The Tribunal accepts as persuasive the evidence and submissions by Mr Kelly in his written statements and in his oral evidence, and finds that each of the sums for the remaining items is reasonable as a budgeted figure and that in each respect a service charge is payable by the Respondent/Leaseholder by way of estimated service charge in relation to each of her flats

*Summary of Tribunal's findings in relation to advance service charge of £294.30*

94. The budgeted management fee in respect of which it would be reasonable for the Respondent/Leaseholder to pay an advance service charge should be reduced from £3,243 including VAT to £2,070 including VAT, namely a reduction of £1,273 plus VAT. The overall budgeted figure of £7,063 in respect of which it would be reasonable for the Respondent/Leaseholder to pay an advance service charge should therefore be reduced by the same figure, namely to £5,790, which equates to £482.50 for each flat for the whole year, or £241.25 for each half year. The amount payable by the Respondent/Leaseholder as the first instalment of the advance service charge for the year ending 24 December under this heading is therefore £241.25 in relation to each of her flats, subject to any adjustments in relation to VAT as already mentioned

*Buildings insurance £133.71*

95. *Mr Kelly's additional oral evidence and submissions*

96. Mr Kelly said that the figure of £133.71 was the first of 2 equal instalments of one twelfth of the budgeted premium of £3,209 shown in the statement of service charges for the year ending 24 December 2008 as part of the advance service charge of £10,272 for the year ending 24 December 2009

97. *The Tribunal's findings*

98. The Tribunal accepts as persuasive the evidence and submissions by Mr Kelly in his written statements, and, having taken account of the decisions in the decided cases, and of the fact, as the Tribunal finds, that there has been no specific challenge by the Respondent/Leaseholder to this part of the Applicant/Landlord's claim, the Tribunal finds that this sum is payable by the Respondent/Leaseholder by way of advance service charge in relation to each of her flats

*Administration charges £129.94*

99. *Mr Kelly's additional oral evidence and submissions*

100. Mr Kelly said that in relation to the items referred to in his statement in this respect, the notice under section 166 of the 2002 Act, for which £6.00 had been charged, related to arrears of ground rent. However, in answer to questions from the Tribunal, Mr Kelly conceded on reflection that:
- a. as ground rent could not be the subject of a notice under section 146, a section 166 notice demanding ground rent could not be said to be "in connection with" a section 146 notice for the purposes of paragraph (n) of the third schedule part 1 of the lease
  - b. none of the paragraphs of the third schedule part 1 of the lease required the Respondent/Leaseholder to indemnify the Applicant/Landlord in connection with compliance with statutory requirements as such, despite the assertion in his statement that paragraph (b) did so
101. Mr Kelly did not have at the hearing a copy of the letter before action referred to in his statement for which £18.19 had been charged. He did not know whether it specifically referred to section 146 of the Law of Property Act 1925. However, in order to serve a section 146 notice action had to be taken, so that the letter before action was "in connection with" a section 146 notice for the purposes of paragraph (n) of the third schedule part 1 of the lease
102. Similarly, instructing solicitors to take the county court action, for which £105.75 had been charged, was also "in connection with" a section 146 notice
103. The Tribunal indicated to Mr Kelly that, subject to further submissions, the Tribunal could not follow how a letter before action, or the instructing of solicitors to take action, could be regarded as being "in connection with" a notice under section 146 of the Law of Property Act 1925, any more than the subsequent court proceedings, or even the current proceedings before the Tribunal, could be so regarded. The Tribunal expressed concern that this was essentially a matter of legal argument and that Mr Kelly was unrepresented, and offered Mr Kelly the opportunity of considering the matter further over the lunch adjournment to enable him to make further submissions. However, Mr Kelly said that the arguments in his statement to that effect had been formulated by Hurst Managements' solicitors and that he had nothing further to add

104. *The Tribunal's findings*
105. The Tribunal finds that the only provisions in the lease to which the Tribunal's attention has been drawn as allegedly entitling the Applicant/Landlord to claim the sum of £129.94 from the Respondent/Leaseholder are paragraphs (b) and (n) of the third schedule part 1 of the lease
106. Paragraph (b), as Mr Kelly very fairly and properly conceded at the hearing, does not on any interpretation entitle the Applicant/Landlord to claim this item from the Respondent/Leaseholder
107. Paragraph (n) obliges the Respondent/Leaseholder to pay to the Applicant/Landlord *all costs charges and expenses including solicitors costs and surveyors fees..... incurred in connection with.....any notice under section 146 of the Law of Property Act 1925*
108. The words "in connection with" in that paragraph mean, in the context of the wording of the remainder of the lease as a whole, and by their usual and natural meaning, "concerning" or "in relation to"
109. The sum of £6.00 for a notice under section 166 of the Commonhold and Leasehold Reform Act 2002 relating to arrears of ground rent cannot be claimed under paragraph (n) of the third schedule part 1 of the lease because it cannot be the subject of a notice under section 146 of the Law of Property Act 1925 at all, let alone be "in connection with" such a notice
110. The sum of £18.19 for the letter before action and the sum of £105.75 for instructing solicitors to take action cannot be claimed under paragraph (n) of the third schedule part 1 of the lease either, because :
- a. there is no evidence before the Tribunal that either the letter or the instructions expressly referred to a notice under section 146 of the Law of Property Act 1925, or that they were expressly "in connection with", or were "concerning", or were "in relation to", a notice under that section
  - b. on the contrary, they were expressly "in connection with", "concerning", and "in relation to", the court proceedings which the Applicant/Landlord then took against the Respondent/Leaseholder, in respect of which, again, there is no express mention of section 146 of the Law of Property Act 1925 in either the Applicant/Landlord's claim form nor the Applicant/Landlord's reply to the Respondent/Leaseholder's defence
  - c. the suggestion in Mr Kelly's evidence that they were "in connection with" a notice under section 146 of the Law of Property Act 1925, because they were a necessary precursor to such a notice, is unsustainable; the possibility that the Applicant/Landlord might serve a notice under section 146 of the Law of Property Act 1925 after obtaining a determination of payability under section 168(4) of the 2002 Act, and the fact that, under section 168(1), the Applicant/Landlord could not serve a notice under section 146 of the Law of Property Act 1925 without doing so, would not mean that any such application under section 168(4) was "in connection with" a notice under section 146 of the Law of Property Act 1925 for the purposes of paragraph (n) of the third schedule part 1 of the lease; the application would merely *precede* the section 146 notice, and would not be "*in connection with*" it

111. Having considered all the evidence and submissions on behalf of the Applicant/Landlord in the round the Tribunal finds that this item is not payable by the Respondent/Leaseholder in relation to any of her flats

**Summary of Tribunal's findings**

112. In relation to the claims transferred to the Tribunal by the County Court the following sums are payable by the Respondent/Leaseholder in relation to each of her flats :

service charge	claimed	242.09	payable	242.09
advance service charge	claimed	294.30	payable	241.25*
insurance rent	claimed	133.71	payable	133.71
administrative service charge	claimed	129.94	payable	nil

\* subject to any adjustments in relation to VAT as already mentioned

113. The Tribunal now transfers the claims back to the Bournemouth County Court accordingly

Dated 30 June 2010

  
.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor