

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

Case Numbers: CHI/00ML/LIS/2009/0047 and CHI/00ML/AC/2009/0005

Property: 3 Braemore Court, 231 Kingsway, Hove BN3 4FG

Applications: (1) Section 27A of the Landlord and Tenant Act 1985
(Service Charges)
(2) Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (Administration Charges)
(3) Section 20C of the Landlord and Tenant Act 1985
(Landlords costs of the proceedings)

BETWEEN:

Applicant: Robert Beveridge

Respondents: Braemore Court Investments Limited

Date of Application: 18th May 2009 and 5th July 2009

Date of Hearing: 15th October 2009

Appearances for the Applicants: Robert Beveridge

Appearance for the Respondents: Mr Perry of Ellman Henderson

Members of the Leasehold Valuation Tribunal: Mr H.D. Lederman (Lawyer/Chairman)
Mr AO Mackay FRICS (Valuer/Member)
Mr TW Sennett MA MCIEH (Lay Member)

Date of the Tribunal's Decision: 02 02 2010

THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL:

1. That the total of Service Charges and Administration Charges payable by the Applicant Robert Beveridge to the Respondent Landlord for the service charge years 2006-2007, 2007-2008, 2008-2009 is £1501.08. In addition interest may be payable on that sum under the Lease which the Tribunal has not calculated.
2. The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 to the effect that none of the costs incurred by the Respondent landlord in connection with these proceedings are to be regarded as relevant costs in connection with any service charges payable by the tenants.

DECISION OF THE TRIBUNAL

- I. The Tribunal determines:
 - a. The Tribunal finds the sums claimed under the Lease as service charges from the Applicant for each of the service charge years 2006-2007, 2007-2008, 2008-2009 were payable except for the legal costs, administration charges and interest demanded. The balance that remains payable, taking account of payments made (exclusive of interest, legal costs and administration charges), comes to £1501.08.
 - b. The legal costs of £117.50 (inclusive of VAT) incurred by a solicitors' bill dated 21st February 2008 claimed as service charges were unreasonably incurred. The Tribunal determines a reasonable charge for the work which is the subject of this invoice based upon a charge out rate of £125.00 per hour would be £58.75 (inclusive of VAT) of which £2.50 is payable by the Applicant as the proportion due under the Lease.
 - c. The legal costs of £1245.00 (detailed in an invoice from Edward Harte & Co dated 12th June 2009) were service charges and unreasonably incurred. The Tribunal determines a reasonable charge for the work (excluding disbursements) which is the subject of this invoice based upon a charge out rate of £125.00 per hour would be £813.75 (being £718.75 (inclusive of VAT) for 5 hours work and £95.00 disbursements). Only some of the £1245.00 has been demanded. No part of those legal costs is payable by the Applicant as service charges, as no demand complying with the 2007 Regulations has been served for those sums.
 - d. If, contrary to the Tribunal's finding above, the legal costs are not service charges they are administration charges. The amounts claimed for those legal costs were unreasonable. Reasonable amounts would be the sums set out in paragraphs c. and d. above. However none of the legal costs claimed are payable as no summary of rights complying with the Administration Charge Regulations has accompanied a demand for those legal costs.
 - e. The Tribunal finds that one hour of the services for which fees are claimed in the invoice from Edward Harte & Co dated 12th June 2009 related to these proceedings in the Leasehold Valuation Tribunal. The Tribunal orders that none of those costs are to be regarded as relevant costs to be taken into account in determining the amount of service under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"). Accordingly, even if an appropriate demand with the accompanying summary was served, an amount equal to one hour's worth of those services would not be payable by the Applicant.
 - f. The Respondent's managing agent agreed, and the Tribunal orders, that none of the costs incurred by the Respondent landlord in connection with the proceedings

before this Leasehold Valuation Tribunal shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any assignee of Flat 3 or any other service charge relating to Braemore Court.

- g. The Tribunal determines that the order in paragraph (f) above embraces any legal costs incurred by the Respondent's solicitors in preparing the witness statement of Colin Wibley dated 11th September 2009, and any subsequent costs which may have been incurred by Edward Harte & Co on behalf of the Respondent in connection with these proceedings.
- h. The Respondent has not established that any administration charge levied by the Respondents on 15th May 2008 of £35.25, £172.50 (inclusive of VAT) for referral to solicitors (invoice dated 3rd December 2008) and any previous administration charge which may have been claimed by the managing agents Ellman Henderson were payable by the Respondent to the Managing Agents or were served under cover of the Administration Charge Regulations. Accordingly such administration charges are not payable by the Applicant.
- i. The Tribunal finds the amounts claimed by the managing agents Ellman Henderson unreasonable for reminder letters and the referral to solicitors. If any administration fee becomes payable a fee of £80.50 (£70 plus VAT would have been a reasonable amount for such a referral.
- j. The interest payable and claimed under the Lease on sums alleged to be due will require recalculation to take account of the fact that the legal costs and administration charges have not been payable. Interest does not run whilst the appropriate summary has not been served.
- k. The £235.00 charged by Ellman Henderson for providing information about the service charges on the sale of 3 Braemore Court was not an administration charge or service charge claimed by the Respondent over which the Tribunal has jurisdiction.

Issues before the Tribunal

The detail of Mr. Beveridge's application to this Tribunal about service charges are itemised in a sheet accompanying his letter of 9th August 2009. This was used as a basis for discussion at the hearing on 15th October 2009. In his letter of 9th August 2009 Mr Beveridge challenged the administration and legal fees debited to his service charge account for 3 Braemore Court. The Tribunal also raised further issues about this service charge account in its directions issued on 18th October 2009.

Agreement or payment of service charges in issue

3. Mr Perry of Ellman Henderson represented the Respondent at the on 15th October 2009 and in providing further representations. The directions dated 17th June 2009 required the Respondent to file and serve on Mr Beveridge a Statement in reply which contained reason for opposing the application with all documents upon which it intended to rely. In response Mr Perry filed a letter dated 23rd September 2009 with additional documents. He had previously provided documents under cover of letter dated 10th August 2009. In response to directions made on 15th October 2009 Mr Perry made further representations in his letter of 26th October 2009. In none of those representations did Mr Perry on behalf of the Respondent seek to argue that the service charges or administration charges in issue had been agreed or admitted by Mr Beveridge. Accordingly the Tribunal did not consider this as a live issue. Had it been necessary to do so the Tribunal would have found that Mr Beveridge's Defence and Counterclaim in the County Court proceedings referred to below could not properly be regarded as an admission of the service charges and administration charges in issue.

The Lease of Flat 3

4. The starting point for consideration of Mr Beveridge's liability for payment of service charges and administration charges is the Lease dated 27th July 1973 made between Palmeira Investment Company Limited and Harry and Clare Levy as tenants ("the original Lease"). This leased Flat 3 on the first floor of Braemore Court, 231 Kingsway Hove Sussex and Garage 23 for 99 years from 25th March 1973. The original lease of Flat 3 was *in effect* extended and modified by a further lease of Flat 3 of 29th November 2002 made between the Respondent Braemore Court Investments Limited and Sefton Ivor Cohen then the lessee for a term of 999 years from 25th December 2000 ("the further Lease"). The further Lease superseded the original Lease. As the Further Lease included the same premises (flat 3 and garage 23) that operated as a surrender by law of the first Lease.
5. The Further Lease was only produced by the Respondent in its bundle in response. Mr Beveridge may not have been aware of its effect and significance when he issued the application. Mr Beveridge was registered as proprietor of the further Lease at the Land Registry on 31st August 2006. In these Reasons and in the Determination references to "the Lease" are to the Original lease as modified by the further Lease. Mr Beveridge assigned the Lease as from 3rd September 2009. The assignee of the Lease has not been joined as a party to these proceedings.

Status of this determination

6. The Applicant and the Respondent are the only parties to this determination. Necessarily the Tribunal has only addressed the issues which have been put before it by these parties. Nothing in this determination or in these Reasons should be taken as affecting or binding any other party. Nor should any of this determination

be treated as making any comments about the service charge years considered which are binding on any other lessees, except insofar as the Respondent landlord may be unable to recover legal costs or expenses arising from this decision.

Procedure and directions

7. On 15th October 2009 the Tribunal undertook a hearing at which Mr C Perry of Ellman Henderson represented the Respondent and Mr Beveridge appeared. Following that hearing directions dated 18th October 2009 were issued to the parties. By letter dated 26th October 2009 Mr Perry made further representations and produced a large number of additional documents mainly vouchers and documents relating to service charge years 2006/2007, 2007/2008 and 2008/2009. By e-mail of 9th November 2009 Mr Beveridge indicated he had no further representations.

Inspection

8. The Tribunal inspected the exterior and some of the common parts of Braemore Court on 15th October 2009 before the hearing. In particular the stairway leading up to Flat 3 and lift lobby outside Flat 3 on the first floor was inspected. Two of Tribunal members and Mr Perry also inspected the boiler house on the roof. Flat 46 is immediately below Flat 3 on the sixth floor. Flat 3 was on the east side of the building on the second floor. Flat 48 is on the 7th floor. 3 boilers were in the boiler room. There would have been hot water and cold water pipes. The Tribunal noted some rust to the hand rails on the east stairway. The front forecourt was laid to tarmac. There was a rear roadway leading to a number of garages at the back of Braemore Court also laid to tarmac.
9. The hearing commenced at 11.37 am on 15th October 2009. It emerged that Mr Beveridge had not been served with a copy of the bundle of documents provided to the Tribunal by Mr Perry under cover of his letter of 10th September 2009. Accordingly after some discussion the hearing was adjourned to enable Mr Beveridge to consider those documents from about 11.50 to 12.25 am. Mr Beveridge had no particular expertise or experience in legal or service charge related matters. The Tribunal ascertained whether Mr Beveridge wished to have more time to consider the documents or take legal or other advice about their contents. Mr Beveridge declined and said that wished the hearing to continue on that day.
10. At the end of that hearing the Tribunal raised a number of questions about documents and further evidence that it invite the parties to make comment upon. The Tribunal made the following directions on 18th October 2009.
 - a. The Tribunal determines that the hearing of each of the applications shall be adjourned to enable both parties to present written representations (written arguments) upon documents produced at the

hearing on 15 10 2009, upon documents which are directed to be produced below and upon issues which arose at that hearing.

b. The Respondent does by 4.00 pm on 26th October 2009 file at the Tribunal and serve upon the Applicant paginated and indexed bundles (4 copies for the Tribunal) containing true copies of the following documents:

i. Signed minutes of the Annual General Meetings of the Respondent for 2008 and 2009;

ii. The priced specification for carpeting and resurfacing and any other major works carried out in service charge years ending March 2007, March 2008 and 2009 together with copies of any notices served pursuant to section 20 of the Landlord and Tenant Act 1985 (as amended) and the attachments to those notices;

iii. Final account documents relating to the said major works for the said service charge years with any accompanying documents so that the final account(s) can be properly understood;

iv. Any specifications or estimates or other documents evidencing works to the railings to the staircases to Braemore Court, the costs thereof and the options considered;

v. Invoices or other documents evidencing agreed payment to the cleaners for the service charge years ending March 2007, March 2008 and 2009 and documents evidencing the contractual sums agreed;

vi. Documents or other written explanation relating to whether the works to Flat 48 Braemore Court in 2008 or 2009 were works which wholly or partly related to pipework serving that Flat;

vii. documents or other explanation relating to whether the works to Flat 46 Braemore Court in 2008 or 2009 were works which wholly or partly related to the consequence of defective pipe work serving Flat 48 Braemore Court including surveyor reports by Mr Hall;

viii. Agreed terms of appointment or engagement of Ellman Henderson managing Agents for service charge years ending March 2007, March 2008 and 2009 and documents evidencing the contractual sums agreed and menu of charges;

ix. Copies of documents said to have accompanied the demand for administration charges claimed from the Applicant;

c. The Respondent does make any further representations it wishes upon the following issues by 4 pm on 26th October 2009 (sending 4 copies to the Tribunal and one copy to the Applicant)

- a. the said documents;
- b. the Applicant's letters dated 04 06 2008, 29 10 2008 and 20 10 2008 and an example of an application for payment made by Ellman Henderson on behalf of the Respondent produced by the Applicant at the hearing for the first time;
- c. whether the level of the administration charges claimed by the Respondent were notified in advance to the Applicant;
- d. whether recovery of the administration charges is prohibited by the Unfair Terms in Consumer Contracts Regulations 1999;
- e. Schilling v Canary Wharf LRX/65/2005 (Lands Tribunal decision);
- f. whether the legal costs of the County Court proceedings (including any court fee claimed) brought against the Applicant in the Brighton County Court 9BN 01372 are payable or were reasonably incurred under sections 27A or section 19 of the Landlord and Tenant Act 1985 (as amended)
- g. whether the costs incurred or to be incurred by the Respondent in connection with proceedings before these Leasehold Valuation Tribunal proceedings are to be regarded as relevant costs to be taken into account in determining the service charge payable by the Applicant or by any other persons such as the Applicant's successor in title (the application being treated as specifying such a person by virtue of regulation 3(8) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003.

d. The Applicant's representations upon the said documents and upon the additional representations to be produced by the Respondent (if any) are to be made by 4 pm on 02 November 2009 or by 14 days after receipt of the Respondents written representations and documents produced if that date is later than 02 November 2009.

e. With the agreement of the Applicant and of Mr Perry of Ellman Henderson on behalf of the Respondent at the hearing on 15 10 2009, these applications will be determined by the Tribunal giving the matter consideration without a further oral hearing upon receiving the documents and written representations set out above.

f. If either party requires further time to take any step specified in the direction above, the Tribunal may consider such an application, but such application must be made before the period specified for carrying out that step expires.

g. If either party requires a variation of these directions they should write to the Tribunal before 02 November 2009 setting out the grounds for requiring such a hearing.

h. In view of the impending postal strike, copies of documents are if possible to be filed and served by document exchange, facsimile transmission by hand or by e-mail if the postal service remains interrupted.

(numbering varied for ease of reference)

11. A number of additional documents were received from Ellman Henderson on behalf of the Respondent under cover of its letter of 26th October 2009. No additional documents or comments were received from Mr Beveridge. The Tribunal reconvened to consider its decision on 16th December 2009 in the absence of the parties.

Service charges and administration charges

12. "Service charges" are the name given by Acts of Parliament such as the 1985 Act to monies payable under a lease of a dwelling like the property for services, works and management costs provided to the lessee (Mr Beveridge) by the landlord (Braemore Court Investments Limited). "Administration charge" is defined by the 2002 Act to include an amount payable by a tenant of a dwelling as part of or in addition to the rent payable directly or indirectly "in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant".

Relevant provisions in the Lease

13. Covenant is another word for a promise within a Lease which is by a Deed. The covenant by the Lessee (Mr Beveridge) is contained in clause 4 of the Original Lease. In that clause service charges are called "annual maintenance cost". Clause 4(iv) provides that the proportion payable by Flat 3 is a fraction equivalent to

2.132049%. The evidence from Mr Perry was that other flats in Braemore Court had different percentages in their leases. This was not challenged. Clause 4(v) of the Original Lease lists the various items which the landlord can properly charge the lessee as part of service charge.

Relevant legislation

14. Sections 18–30 of the 1985 Act refer to restrictions on “Service Charges”. The relevant provisions are:

“18— (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a (dwelling) as part of or in addition to the rent—

- (a) which is payable directly or indirectly for services ... or insurance or the landlord's cost of management and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

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 provisions 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 ...

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

Section 21B of the 1985 Act provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B(3) states a tenant may withhold payment of a service charge demanded from him if that information did not accompany the demand. That information is prescribed by

the Service Charges Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007 (“the 2007 Regulations”).

Where a tenant withholds a service charge under section 21B, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it: see section 21B(4) of the 1985 Act. With a small exception, section 21B takes effect in relation to service charge demands served on or after 1st October 2007.

Section 27A(1) of the 1985 Act provides the Tribunal with jurisdiction to determine whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

“An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable”

Paragraph 2 of the 11th Schedule to the 2002 Act provides “A variable administration charge is payable only to the extent that the amount of the charge is reasonable”. Paragraph 1(3) of the 11th Schedule to the 2002 Act defines “variable administration charge” to mean an administration charge payable which is neither (a) specified in [the] lease, nor (b) calculated in accordance with a formula specified in [the] lease. Paragraph 5 of the 11th Schedule to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of administration charges in the same way as for service charges under section 27A of the 1985 Act. The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (“the Administration Regulations 2007”) require a summary of

rights to accompany any demand for an administration charge made on or after 1st October 2007. Paragraphs 4(3) and 4(4) of Schedule 11 to the 2002 Act enable the tenant to withhold payment of an administration charge in the same manner and with the same consequences as he could withhold payment of service charge demand which was not accompanied by a demand.

The parties

15. The Respondent is a company owned by residents of Braemore Court. In practice the day to day management appears to have been carried on by Ellman Henderson managing agents with input from the directors. The Applicant appears to have had no background in leasehold matters, and did not have the benefit of professional advice at any of the relevant times. It emerged that the description of him as solicitor in one of the service charge demands was incorrect. He has no legal or other relevant expertise.

Items in issue

16. The Applicant initially asked for determination for years 2006-2007, 2007-2008, 2008-2009 and 2009-2010 in his application notice issued on 18th May 2009. But when asked for further details in letter of August 2009 restricted his complaints to the following items which are commented upon individually. In addition at the hearing on 15th October 2009 it became clear that his comments were restricted to the following items discussed below. In any event the Tribunal would be reluctant to deal with the service charge year 2009-2010 without joining the assignee as a party as Mr. Beveridge is no longer primarily liable for service charges for that year.

Item No 1 service charge percentages

17. Mr Beveridge first complained that he could not understand how the total of the service charge percentages added up. When it was explained by Mr Perry of Ellman Henderson that the proportions payable as service charge by lessees with different leases in Braemore Court were different, he accepted he would not have made that objection if he had known this. The proportions are set out in Ellman Henderson's letter of 10th September 2009 and were not challenged by Mr Beveridge at the hearing. The Tribunal has no reason to doubt the account given of service charge percentages. This item is not a ground for non-payment by Mr Beveridge.

Item no 2- standard of work

18. Initially the Applicant complained in wide terms that the standard of work is poor in his schedule attached to his letter of August 2009. His schedule attached a number of letters from other residents making a variety of complaints about different matters. None of those residents attended to give evidence. At the hearing the

Applicant complained about rust on the railing and rust on the windows on the east staircase. Tribunal noted poor paintwork on the windows but not rust on the windows. Many of the windows had metal frames. Some of the window frames were aluminum, some were wooden. There was some rust on the hand rails.

19. The Tribunal considered the invoices for paint works to the stairways. These were carried out by a general builder who appeared to carry out a variety of small maintenance and decorative works to Braemore Court. It was evident these works were intended as a comparatively modest and cheap piece of work. By way of example the Applicant has not persuaded us that the works carried out to the rear staircase on the east block priced at £585.00 (no VAT charged or payable) in invoice no 1182 dated 10th November 2007 were not reasonably incurred given the price paid or that he has suffered loss. It is true that the decorative work might have been carried out differently, and lasted longer, perhaps to a higher standard at a higher cost by a larger organisation. However, the test is not whether the works were reasonable but whether the sums were reasonably incurred. For a comparatively small block the Tribunal is unpersuaded that the sums expended on painting and decorating the stairways were not reasonably incurred. The standard of workmanship was not seriously defective and the builder used to carry out the work appeared to have provided reasonable service for other work.
20. The Applicant did not draw the Tribunal's attention to any other stairways or items defective work.
21. The Applicant raised a number of complaints about the Tarmac work to the rear road way adjacent to the garages at Braemore Court. He complained that the tarmac work was not carried out adequately or competently. A similar complaint had been raised by a Mr Fitzgerald of 28 Braemore Court in his letter of 06 11 2008 where it was said the issue of flooding had not been rectified. Mr Perry of Ellman Henderson gave evidence that where the work had been completed initially to a standard that was less than satisfactory the contractors had re-laid the tarmac. Further documents were put before the Tribunal about the relaying of the tarmac after the hearing in October 2009. Mr Perry's evidence was the contract which included that work was carried out under the overall supervision of Phillip Hall BSc FRICS a chartered surveyor. The Tribunal has seen a final account which unfortunately was not self explanatory. The Tribunal could not be satisfied from the evidence available that the work to the tarmac was incomplete or had been completed to a less than satisfactory standard. On the available evidence, the Tribunal is not persuaded the works to the tarmac were below a reasonable standard or the costs incurred for that work were not reasonably incurred.
22. The Tribunal has not seen any expert evidence about this tarmac or the standard of the works carried out under that contract. Nothing in this determination should be taken as a finding that the tarmac works were carried out to a satisfactory standard, or that other works under that contract were satisfactory. The Tribunal's finding is

restricted to the point that that Mr. Beveridge has failed to persuade the Tribunal of the force of this particular criticism on the limited evidence he has produced.

Item No 3 standard of service

23. Mr Beveridge was asked for details of his case about this at the hearing in October 2009 as it was unclear from the schedule attached to his letter of 9th August 2009. His case at the hearing was that he wrote complaining of the level of service charges and raising complaints about a number of issues but he did not receive a reply or in some cases a satisfactory reply. He produced a copy of a letter of 4th June 2008 seeking information. This may have been a complaint about the response of the Managing Agents to his complaints. Mr Perry responded at the hearing that Mr Beveridge was given the opportunity to inspect invoices and documents. Mr Beveridge accepts that he was given such an opportunity. The Tribunal notes that Ellman Henderson did write to Mr Beveridge on 10th November 2008 in response to Mr Beveridge's letter of 10th October 2008. Although that letter did not go into as much details as perhaps it might have done, it did invite Mr Beveridge to meet with Ellman Henderson and the managing agents to discuss his concerns. Mr Beveridge gave evidence that he received the letter of 10th November 2008.
24. Mr Beveridge did write on 16th December 2008 seeking details of the bank the in service charge funds were held, how much was left and the cost of any future works. This letter was answered by a solicitors letter of 19th January 2009 (Edward Harte & Co) which said he had been provide with much of that information previously. There were no other complaints of failure to answer correspondence.
25. In his oral evidence Mr Beveridge expressed concern about the practice of the Respondent levying service charge demands for reserve funds for works not carried out immediately. It suffices to say the Tribunal did not find anything in the criticisms made by Mr. Beveridge made about the practice of claiming reserve funds (permitted by clause 4(v) of the original Lease) which would justify a reduction in service charge. The Service Charge Management Code for 2008 expressly endorses the keeping of reserve funds as a means of budgeting for future large expenditure. That is not to say that the Tribunal makes any finding about the reasonableness or payability of any particular service charge item based upon a particular demand reserve fund. It is simply that Mr. Beveridge did not formulate a complaint or produce any evidence to persuade the Tribunal that a particular service charge demand for funds to be put towards a reserve fund was not proper or was unreasonable.
26. The Tribunal's makes other findings below, including those relating to legal costs and administration charges, which implicitly criticise the Managing Agents and the Respondent in relation to those items. Despite those criticisms, the Tribunal is not persuaded that the standard of service as a whole was such that the managing agent's fees were not reasonably incurred or were not payable.

Item No 4 the £235.00 charge

27. Mr Beveridge paid £200.00 plus VAT of the provision of information about service charges and the like to the prospective purchaser of the Lease of Flat 3. Ellman Henderson provided that information and the payment were made to them. The Tribunal does not regard that as an administration charge or a service charge levied by the Respondent over which it had jurisdiction. Mr Beveridge accepted this at the hearing in October 2009.

Item No. 5 “fire risk assessment”

28. Mr. Beveridge points out that there is a debit entry of £3923.00 in the service charge year ended March 2009. This item is described as being for fire risk assessment. He complained (correctly as Mr. Perry was constrained to accept) that such an assessment had been carried out in the previous service charge year for a cost of £858.00. Mr Perry gave evidence about this at the hearing in October 2009 (and in his letter responding to the various points raised dated 22nd September 2009) to the effect that this was a labelling error. The sum of £3923.00 was for works to the dry riser by Pyrotec Fire Detection Limited and comprise two invoices, one for £3,555.51 (inc. VAT dated 15 08 2008) and one for £367.77 (inc VAT). When this was explained the Applicant agreed this. The error is unfortunate but the Tribunal does not see this as a ground for holding £3,923.00 was not payable.

Items no. 6 Cleaning

29. Mr Beveridge questioned the sum of £8,000 (actually £7892) for the service charge year ended March 2009 charged for cleaning services. He stated that the cleaner worked an average of 6 hours per week and said that this equated to an average of £25.64 per hour. Mr. Beveridge’s evidence was that he was present for a number of months during the 2008-2009 service charge year in his Flat. His evidence was that the cleaner was only present for 3 days a week. His evidence was that for some mornings the cleaner was not present for even 2 hours. He thought nearly £25 per hour for 3 days a week was an unreasonable sum for this service. Mr Beveridge’s evidence was examined in more detail by the Tribunal. As he was present in his Flat for most of the time when he made his observations. Mr Beveridge would not have been aware how much work and time the cleaner spent on other parts of Braemore Court. These other parts were accessed by other staircases which he could not have observed from his flat. It emerged he would only observe the cleaner on his staircase for some 35-45 minutes. Mr Beveridge inferred that the cleaner spent the same amount of time on each staircase. The Tribunal was not satisfied that such an inference could be drawn.
30. Mr Perry’s evidence (also contained in his letter of 22nd September 2009) was that the cleaning company attended 6 days a week removing rubbish. There was also a schedule of works a specification for the cleaner. This cleaning company was cheaper than the cleaners previously used.

31. The Tribunal is not persuaded that Mr Beveridge's complaint to the effect that the cleaners were not working for the contracted hours were was made out. He was unable to provide firm or direct evidence about the number of hours worked by the cleaners. None of the supporting written complaints mentioned cleaning. If the cleaners had not been performing their allotted tasks, the Tribunal would have expected to have seen some evidence of that from other sources apart from Mr Beveridge.

Item 7 lift contract

32. The 2009 service charge account showed a figure of £3771.00 for lift contract. Mr Beveridge points out the invoices showed a lower figure of £3,384.00. Mr. Perry accepted that in fact this cost was broken down by 3 separate invoices of 16 02 2009 (£152.95), £233.45 (17 02 2009) Lift contract and £3384.00 – see document 5. Mr Beveridge agreed this when shown the invoices. In fact the invoices add up to £0.60 less but the Tribunal treats this as too small to warrant interference.

Item 8 General repairs

33. Mr. Beveridge requested a breakdown of the sum of £6,781.00 for general repairs for the service charge year ended 2009 general repairs. A selection of invoices was annexed to Ellman Henderson's letter of 23rd September 2009. These were considered by the Tribunal. Mr Beveridge accepted those invoices added up to that figure.
34. The Tribunal questioned whether some of the pipework repairs carried out were the responsibility of individual lessees rather than service charge fund. Having considered what Mr Perry says about the diameter of the (1.5 inch pipe) the Tribunal does not question the decision to pay this as service charge repair on the basis that would have served the building. This was not the liability of the individual lessee of the flat in respect of which the repairs were carried out.
35. There were a number of invoices for general repairs in the service charge year ended 2009. There was no evidence which would enable the Tribunal to reach any conclusions about whether there had been a failure to carry out repairs promptly and whether the Applicant had a set of or counterclaim which should be taken into account.

Legal costs and costs in the County Court proceedings

36. The items of legal costs claimed by the Respondent were challenged. First a debit of £117.50 made to Flat 3's account of 26th February 2008. Secondly a demand for legal costs of £201.25 made in Edward Harte & Co's letter of 29 January 2009 and a demand for £777.13 which includes legal costs in Edward Harte & Co's letter of 29 May 2009. The Tribunal emphasises that its jurisdiction is concerned with legal

costs claimed by the Applicant to be due under the Lease, whether as service charges or otherwise. The Tribunal has no jurisdiction to consider what (if any) orders for costs should be made in relation to the costs of the County Court proceedings which have been commenced by the Applicant against Mr Beveridge (Brighton County Court Claim no 9BN 01372) or indeed any other order which may be made in those proceedings, and does not do so.

37. Those County Court proceedings have been stayed until the conclusion of these proceedings pursuant to an order of the County Court dated 22nd June 2009.

Demands for payment of legal costs

38. The sums claimed as legal costs from the Applicant were claimed in Ellman Henderson's demands for payment dated 15th May 2008 (£117.50 legal costs claimed) and 21st April 2009 (£230.00 legal costs claimed for period 6th February 2009 to 19th March 2009). Further sums by way of legal costs were claimed in Edward Harte & Co's letter of 12th December 2008, 29th January 2009, 25th March 2009 and 20th May 2009 and in the Particulars of Claim 9BN 01372.
39. In response to the Tribunal's directions on 18th October 2009 under cover of letter of 26th October 2009 Ellman Henderson produced a document entitled "Service Charges Summary of Tenant's Rights and Obligations". It was asserted (and the Tribunal finds) that that information was sent out in conjunction with every maintenance demand". That information complies with the requirements of the 2007 Regulations". There is no evidence that such information was sent out with any of Edward Harte & Co's letters demanding payment of legal costs. The Tribunal finds that such statutory information was not sent with Edward Harte & Co's letters demanding payment of legal costs.

The Applicant's right to recover legal costs under the Lease

Are the legal costs service charges?

40. Although some of the legal costs claimed from Mr Beveridge were said to be due under clause 3(15) of the Lease (costs etc incurred in contemplation of proceedings under section 146 of the law of Property Act 1925), the Tribunal is satisfied the sums claimed were in fact indirectly part of the landlord's "costs of management" within the meaning of section 18(1)(a) of the 1985 Act. Clause 4(v)(f) of the original lease expressly makes the "fees, charges and expenses payable to any solicitor whom the Lessor may.. reasonably employ in connection with.... The collection of maintenance charges". In other words the original lease classified this as a service charge item. It was evident from Mr Perry's oral submissions on 15th October 2009 that in the context of the Applicant landlord owned by residents he (and the Applicant) regarded it as inequitable that such fees and costs should be borne by service charge rather than by the individual alleged to be in default. The Tribunal regards the demands for these sums as in substance a demand for service

charges under the Lease. The classification of these costs as payable under clause 3(15) of the Lease appears to the Tribunal as an attempt to circumvent the provisions of the original Lease and the further Lease.

41. That analysis is borne out by the witness statement of Colin Wibley of 11th September 2009 the partner in Edward Harte & Co with responsibility for the County Court proceedings against Mr Beveridge and correspondence with him before those proceedings. In paragraph 3 of that statement he describes the scope of his instructions on 29th November 2007 as “to act with a view to recovering arrears of service charge contributions”. In paragraph 7 of that statement he confirms he was again instructed on 3rd December 2008 in connection with “arrears of service charge contributions”. That much is also clear from the correspondence between Edward Harte & Co and Mr Beveridge and between Edward Harte & Co and Ellman Henderson. The scope of the retainer of that firm is also evidenced by the firm’s invoice dated 12th June 2009.
42. The legal professional who drafted the Particulars of Claim thought that costs could be recovered “on an indemnity basis” under to the provisions of the Lease according to the prayer to the Particulars of Claim. Mr. Wibley’s witness statement dated 11th September 2009 draws attention to clause 3(15) of the Original lease. Mr Wibley appears to be saying those debt proceedings were in or in contemplation of any proceedings under section 146 of the Law of Property Act 1925. The basis for Mr Wibley’s view is not entirely clear. There is no evidence before the Tribunal that forfeiture proceedings were contemplated, let alone proceedings in which relief from forfeiture would be sought under section 146 of the Law of Property Act 1925. There is no reference to forfeiture either in the proceedings themselves or in the correspondence which the Tribunal has seen passing between Edward Harte & Co and the managing agents who instructed that firm on behalf of the Respondent. Although it is possible that such proceedings were contemplated, the Tribunal has no evidence to that effect. Accordingly the Tribunal does not accept Mr. Wibley’s analysis. Even if such proceedings were contemplated, the Tribunal finds the County Court proceedings were not sufficiently connected to forfeiture proceedings or service of a notice under section 146 of the Law of Property Act 1925 to fall within clause 3(15) of the Original lease. The Tribunal is reinforced in this conclusion by the analysis in *Forcelux v Binnie*[2009] EWCA Civ 1077 at paragraphs 3-6.

Reasonableness of sums claimed as legal costs as part of service charges

43. On that footing legal costs incurred in recovery of service charges are a head of expenditure which the landlord could be recovered as part of service charge under clause 4(v)(f) of the original lease. Mr. Beveridge’s contribution to those costs (insofar as they were not recovered from a lessee or from him pursuant to an order of the Court), would be limited to his proportion under the Lease namely 2.132049% - see clause 4(iv) of the original Lease.

44. The Tribunal put to Mr Perry in the course of the hearing that the level of the alleged service charge arrears from time to time did not appear to justify engaging solicitors at hourly charge out rates of £190 per hour (plus VAT) (client care letter 30th November 2007) and £200 per hour (plus VAT) (client care letter 12th December 2008). When instructions were given to solicitors at the outset the arrears of service charge were £1,279.28 (without interest or legal costs added): see Edward Harte & Co's letter of 03 12 2007. Subsequently when the solicitors were instructed again in December 2008 (the time when the fees for referring the papers to solicitors were charged by the managing agents) the sums claimed were £1323.16 plus £201.25 legal costs and interest: see Edward Harte & Co's letter of 29th January 2009. Even when proceedings were issued in April 2009 the principal claimed was £1,826.33 although that sum appeared to include £117.50 legal costs). This claim would in all probability fallen within the small claims limit of the County Court where no significant legal costs would have been recoverable unless those costs were payable as a debt. Accordingly the Tribunal found it difficult to understand how those hourly rates and the costs actually incurred (namely £632.50 exclusive of issue fees and other costs at that stage) could be regarded as proportionate or justifiable in the context of a comparatively small debt.
45. Even if it was arguable that some of the pre-action or post issue legal costs were recoverable under clause 3(15) of the Lease (whether or their own or as part of service charge), the legal costs themselves would have been subject to an assessment to ensure they accorded with a contractual entitlement. On such an assessment by a Costs Judge, there would have a significant risk the Costs Judge would have had regard to the issue of proportionality, even if there was a contractual entitlement to payment of costs: see *Schilling v Canary Wharf* LRX/65/2005 paragraph 60.
46. Mr Perry responded to this criticism of the amounts claimed as legal fees having spoken to Edwards Harte & Co according to his letter of 26th October 2009. Mr Wibley, the senior partner at Edward Harte & Co is reported to have said that "given his experience and level of qualification £200 per hour exclusive of VAT is "very competitive". In the Tribunal's view this misses the point. Nothing said in this decision is intended to comment on Mr Wibley's experience or expertise as solicitor. Whilst it might have been thought desirable to engage a solicitor of Mr. Wibley's experience and qualification, this was on any view *at this stage* a comparatively small debt without any particular complications. In the ordinary run of events no costs of the proceedings (apart from Court issue fees and some witness costs) would be recovered as this claim remained below the small claims limit in the County Court. Even if costs were recoverable, this is a small claim which many Costs Judges would regard as appropriate to a very junior solicitor or a legal executive for the purpose of assessment of costs payable by the losing party.
47. Accordingly the Tribunal finds the legal costs of £117.50 (inclusive of VAT) under a solicitors' bill dated 21st February 2008 claimed as service charges were not reasonably incurred as they were based upon a charge out rate of £190.00 per hour.

The Tribunal determines a reasonable charge for the work which is the subject of this invoice based upon a charge out rate of £125.00 per hour would be £58.75 (inclusive of VAT). That amount is payable by the service charge account.

48. The Tribunal finds the sums claimed (being £1,245.00 detailed in an invoice from Edward Harte & Co dated 12th June 2009) were not reasonably incurred. The Tribunal determines a reasonable charge for the work (excluding disbursements) which is the subject of this invoice based upon a charge out rate of £125.00 per hour would be £813.75 (being £718.75 (inclusive of VAT) for 5 hours work and £95.00 disbursements). Mr Wibley explained in his statement this invoice included the sums claimed for legal costs challenged by Mr Beveridge namely £201.25 demanded in Edward Harte & Co's letter of 29th January 2009 and £777.13 demanded in Edwards Harte & Co's letter of 20th May 2009. Ellman Henderson sought to argue that Mr Wibley's experience and level of qualification enabled him to carry out the work more quickly than a junior employee: see their letter of 26th October 2009. The issue is not whether the legal work could have been carried out more cheaply. The issue is whether it was reasonable to incur legal costs of that level in a case of this kind when the prospects of recovery of those legal costs from Mr Beveridge were doubtful. By way of example only (and non-exhaustively) had the Respondent obtained a declaration that the sums claimed as service charges in these proceedings were payable from the Leasehold Valuation Tribunal before instructing solicitors, or before such significant legal costs were incurred, much of the legal costs in the county court proceedings might not have been incurred.
49. However, no demand accompanied by the summary of information required by the 2007 Regulations has been served in respect of the sums claimed in the invoice from Edward Harte & Co dated 12th June 2009. The Tribunal finds that the Applicant has withheld sums including legal fees and administration fees because he disagreed with them and had not been sent a "bill": see his Defence and Counterclaim in the County Court proceedings and the terms of the application to this Tribunal which challenged the legal fees. No summary of rights complying with the 2007 Regulations or has been served on the Applicant in respect of these legal costs. Accordingly none of these legal costs (the sums claimed in the invoice from Edward Harte & Co dated 12th June 2009) are payable as service charges by the Applicant.

Administration charges

Managing agent's administration charges

50. There is no provision for payment of administration charges by the Applicant in the Lease. Mr Wibley acknowledged this in his letter giving advice to Ellman Henderson of 13th February 2009. The suggestion that such costs are recoverable under clause 3(15) of the Lease is unarguable in the Tribunal's view. The written agreement between the Respondent and Ellman Henderson does not provide for such administration charges to be made.

51. Accordingly there is no basis for finding the Applicant has liability to make any payment of the administration charges debited to his account on 15th May 2008 (£35.35 claimed for 2nd reminder letter) and 3rd December 2008 (£172.50 claimed for solicitor referral letter), or any earlier reminder. Those charges were sums alleged to be payable directly or indirectly in respect of a failure by Mr Beveridge to make payment by the due date within paragraph 1(1)(c) of Schedule 11 to the 2002 Act.
52. Alternatively, if these sums are payable under the Lease, the amounts and the charges are not specified in the Lease or calculated in accordance with a formula specified in the Lease: see paragraph 1(3) of Schedule 11 to the 2002 Act. The Tribunal would have jurisdiction to consider the reasonableness of the amount of that charge in that event. If it is necessary to do so the Tribunal finds the administration charges claimed on 15th May 2008 (£35.35 claimed for 2nd reminder letter) and 3rd December 2008 (£172.50 claimed for solicitor referral letter) to be unreasonable. The second remainder letter should be regarded as included within the managing agent's charges. Mr Perry was unable to point to any specific significant additional work in preparing and sending that letter. The referral fee struck the Tribunal as open to very significant doubt as the solicitors had been instructed by that date. Mr Perry was unable to point to any particular work carried out, or the amount of work carried out and candidly accepted this was a "standard fee" that he imposed for this task irrespective of the amount of work involved.
53. The Tribunal directed Ellman Henderson to produce copies of documents said to have accompanied the demand for administration charges claimed from the Applicant in its directions dated 18th October 2009. No summary of rights complying with the 2007 Administration Regulations was produced. Those administration charges are not payable because the demands for those charges were withheld and the Tribunal finds the demands were not accompanied by a summary complying with the Administration Regulations.

Legal costs as administration charges

54. The Tribunal turns to consider whether the legal costs which Edward Harte & Co and Ellman Henderson have sought to charge to Mr Beveridge's account are payable as administration charges. If the Tribunal's view that those legal costs amounted to service charges within section 18 of the 1985 Act is not accepted and the sums claimed are due under clause 3(15) of the Lease, the Tribunal finds they amounted to amounts payable directly or indirectly "in connection with a breach (or alleged breach) of a covenant or condition in the Lease within paragraph 1(1)(d) of Schedule 11 to the 2002 Act.
55. In respect of those legal costs, the amounts and the charges are not specified in the Lease, nor are they calculated in accordance with a formula specified in the Lease: see paragraph 1(3) of Schedule 11 to the 2002 Act. The Tribunal would have

jurisdiction to consider the reasonableness of the amounts of those charges in that event. If it is necessary to do so the Tribunal finds the sums claimed are unreasonable administration charges for the reasons set out in paragraphs 47 and 48 of this determination. The Tribunal also finds those sums unreasonable as an attempt to circumvent the process of assessment of costs that would apply if the County Court had heard the claim. The amounts which the Tribunal finds to be reasonable are set out in paragraphs 47 and 48 of this determination.

56. Those legal costs are not payable because the demands for those charges were withheld and not accompanied by a summary complying with the Administration Regulations.

Section 20C of the 1985 Act application

57. Section 20C of the 1985 Act provides in its material parts (immaterial amendments omitted):

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.”

.....

“(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances”.

58. The Respondent’s managing agent agreed, and the Tribunal orders, that none of the costs incurred by the Respondent landlord in connection with the proceedings before this Leasehold Valuation Tribunal shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any assignee of Flat 3 or any other service charge relating to Braemore Court. These costs include legal costs and any managing agent’s costs.
59. The Tribunal determines that the order in paragraph 58 above embraces any legal costs incurred by the Respondent’s solicitors in preparing the witness statement of Colin Wibley dated 11th September 2009, the Request for Further and Better Information of the Applicant’s application in pages 68-69 of the Applicant’s bundle and any subsequent costs which may have been incurred by Edward Harte & Co on behalf of the Respondent in connection with these proceedings.

60. The invoice of Edward Harte & Co of 12th June 2009 indicates that firm spent some time “receiving copy LVT application, reading and considering and advising, preparing draft directions and also preparing request for further and better information”. It is a separate question whether the retainer of Edward Harte & Co actually extended to carrying out work in these Leasehold Valuation Tribunal proceedings for which the Respondent is liable to that firm. That question is not within the Tribunal’s jurisdiction. If the Respondent is liable to Edward Harte & Co for carrying out work in these Leasehold Valuation Tribunal proceedings, the Tribunal estimates doing the best it can on the limited material available that such work amounted to about one fifth of the hours charged for in the invoice of 12th June 2009 (i.e. 1 hour). The Leasehold Valuation Tribunal is a no costs jurisdiction, with the small exception of orders for costs which can be made when the parties’ conduct is frivolous vexatious abusive disruptive or otherwise unreasonable within paragraph 10 of Schedule 12 to the 2002 Act. Any attempt to recover these costs whether through service charge or through the County Court proceedings, or otherwise would be an attempt to circumvent this provision. Accordingly the order under section 20C of the 1985 Act applies to these costs as well.
61. In reaching the decision to make the order under section 20C of the 1985 Act, the Tribunal bears in mind that the Applicant has been substantially successful on a large part of his application. If the Respondent was to recover its legal or other costs of these proceedings through service charge, there is a real risk that the Applicant might be faced with a demand for the legal costs which have been declared not payable by this Tribunal and/or a demand for the costs of the managing agents in resisting this application which demand the Tribunal has found to be unmerited. The Tribunal does not ignore the fact that the Respondent is a company owned by residents, so that there is a possibility that it will have to raise funds to pay the legal costs and the managing agent’s costs by means other than by service charge. However, Mr Perry did not suggest that the Respondent would be unable to do this. Mr Perry also told the Tribunal that he had agreed the Respondent would pay Ellman Henderson’s costs of attending and resisting these Leasehold Valuation Tribunal proceedings.
62. In relation to the legal costs which are the subject of invoices or may be the subject of invoices from Edwards Harte & Co, the Tribunal recommends that the Respondent should take legal advice from solicitors independent of Ellman Henderson and Edward Harte & Co as to its liability to make payment of Edward Harte & Co’s fees.

Interest

63. The Tribunal has not heard any argument or representations about interest or whether that is include within Mr Beveridge’s application. It is strongly arguable that the demands to interest are administration charges within the meaning of paragraph 1 of Schedule 11 to the 2002 Act. If the parties cannot reach agreement

about the payment or amount of interest, the Tribunal will deal with the matter by further representations in writing.

Reimbursement of fees

64. No fees were incurred so this issue does not arise.

A handwritten signature in black ink, appearing to read "HD Lederman". The signature is written in a cursive style with a large initial "H".

HD Lederman
Legal Chairman
2nd February 2010