

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00MW/LIS/2010/0071

Re: Flat at 35 High Street, Cowes, Isle of Wight PO31 7RS

Applicant                      David Litchfield

Respondent                    Lance Adams

Date of Application        20 August 2010

Date of Inspection         5 November 2010

Date of Hearing              5 November 2010

Venue                          Northwood House, Cowes

Representing the parties    Both parties attended in person

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
P D Turner-Powell FRICS	Valuer Member

Date of Tribunal's Decision:                      12 November 2010

**Decision**

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years 2007/08, 2008/09, 2009/10 and 2010/11, the reasonable and payable sums for insurance premium in the service charge account for those years are as follows:

Year	Reasonable premiums	1/3 payable by Respondent	Balance between Applicant & Crew Clothing	2/3 of balance payable by Applicant
2007/08	£636.43	£212.14	£424.29	£282.86
2008/09	£931.08	£310.36	£620.72	£413.81
2009/10	£968.26	£322.75	£645.51	£430.34
2010/11	£687.00	£229.00	£458.00	£305.33

2. The Applicant's due contribution to the insurance premiums is payable by him, in accordance with clause 1.5 (IV) of the lease "within 7 days of the lessor requesting payment of the same and the service charge referred to in clause 3.2 of the lease.
3. The Tribunal makes no order under Section 20C as there is in any event no provision in the Applicant's lease which would enable the Respondent to recover his costs in relation to these proceedings

### Reasons

#### Introduction

4. This was an application made by David Litchfield for determination whether certain service charges, namely insurance premiums, for the years set out above were reasonable and payable.
5. The items of service charge in question were the items referred to in the decision.

#### Inspection

6. The Tribunal inspected 35 High Street, Cowes, Isle of Wight (the property). The inspection included the exterior of the property, the Applicant's flat and also, so far as relevant, the exterior of The Studio and its entrance way and hall and other parts so far as contained within the boundaries of the property (the main part of The Studio lying to the rear of the property). The inspection of the Applicant's flat was in the presence of the Applicant only while the inspection of those parts of The Studio was in the presence of the Applicant and the Respondent.
7. The property defined as "the building" in the Applicant's lease comprises, on the ground floor, a retail shop occupied by Crew Clothing, an entranceway direct from the High Street to The Studio and another entranceway direct from the High Street to the Applicant's flat which is situated on the 1st and 2nd floors. The building is of traditional construction and appears to be in good condition for its age and character.

#### Hearing & Representations

8. An oral hearing took place, attended by both parties and the Tribunal heard evidence from them both and further submissions and consider the papers received from them both. Additionally, after the hearing the Applicant sent in to the Tribunal a quotation he had received for insurance cover from Saga Insurance dated 2 February 2010. The Respondent wrote to the Tribunal online November 2010 referring to that quotation and also mentioning other features of the property.
9. The Applicant told us that the insurance cover taken out by the Respondent includes the entire property known as The Studio, not only that contained within the building but also the greater part at the rear, and that it had been agreed between the parties that of the entire insurance premium, one third would be attributed to the The Studio and the remaining two thirds divided as to 1/3 to Crew Clothing and 2/3 to the Applicant.
10. His concern was based on the fact that until the year commencing to August 2008 the insurance premiums for the property had been reasonably stable and then in the subsequent 2 years there had been a dramatic increase but that this reduced significantly for the year commencing to August 2010. He did not dispute the premiums for the years 2007/2008 and 2010/11 but just the 2 years in between ("years 2 and 3"). He told us he had obtained a quotation from Saga which he provided to us after the hearing as mentioned above. In the absence of that at the hearing, he considered that it supported his contention that the premiums for years 2 and 3 he disputed were much too high. [We do not need to refer to the remainder of his evidence of the hearing but refer to the quotation the Applicant received as below].

11. The Respondent's evidence, supported by the documents in the case papers was that he used brokers to test the market on a regular basis; that the property is partly used for commercial purposes which increases premiums; that brokers, having tested the market for the years in question, had advised that the premiums were appropriate for those years; that the premium for 2010/11 had been lower because Fortis had entered the insurance market and a much reduced premium had been achieved. He was uncertain how the sum insured had been decided: he had not had a survey.
12. In respect of the Applicant's application to prevent costs being recovered from the Applicant by way of service charge, he indicated his costs included a round trip and ferry crossing and his staff time.

**Consideration.**

13. We took into account all the case papers and the evidence including the evidence received subsequently.
14. Relevant terms of the Applicant's lease are as follows:
  - a. the landlord covenants to insure the building which is defined as such by reference to blue edging on the plan No 1 attached the lease which excludes The Studio so far as it extends beyond the main building. As regards the insurance of the building, the lessee covenants to pay two thirds of the total premium in respect of cover taken out by the lessor under clause 4.2 which requires him to insure and keep insured all buildings comprised in the building... "... against loss or damage by such risks as are covered by normal comprehensive buildings policy and any other perils and expenditure which the lessor may at its discretion considers desirable for the re-full reinstatement value..."
  - b. There is no provision in the lease which could in any way enable the lessor to recover his costs in connection with these Tribunal proceedings.
15. As the Respondent's policy does include The Studio (because of the nature of the building and The Studio), we accept the apportionment of the total premiums payable under the policy or policies are appropriately provided so that the lessor pays one third of that total.
16. The insurance quotation obtained by the Applicant from Saga as referred to above refers to the Applicant's "recent enquiry about Saga Home Insurance for flat above Crew Clothing Co, 35 High Street". The schedule to the quotation further records, amongst other things:
  - a. "you have told us your property is a self-contained flat, is your permanent home and is solely occupied by you and your family...";
  - b. "Is not used for business purposes".
17. It was clear to us from this document that the quotation obtained by the Applicant did not relate to the entire building but simply to his flat. We accept that the Applicant does not use his flat for business purposes, but there is no question that the lessor is required to insure a building which does include business premises. For these reasons we are bound to say that the quotation does not assist the Applicant's case. Conversely, we have evidence from the Respondent and his brokers as set out above and we also take into account that it was also in the Respondent's financial interests to keep premiums to a minimum bearing in mind his own substantial contribution. We have also taken into account our own knowledge and experience and came to the conclusion that while there has been an evident very substantial increase in premiums for years 2 and 3, they are not out of line with the insurance market in those years for a property of this nature and that all 4 years premiums are reasonable.

18. For want of any clause in the lease enabling the Respondent to seek to charge his costs of these proceedings to service charge, we did not find it necessary to make an order to prevent him doing so.

19. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal  
appointed by the Lord Chancellor