



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HN/LIS/2014/0046

Property : Flats 5 and 6, 19 Lansdowne Road,
Bournemouth, BH1 1RZ

Applicant : Miss Carrie Bray (Flat 5) and
Mr Valiant Patrick Dickson
(Flat 6)

Representative : Mr Dickson in person

Respondent : Sorda Limited

Representative : Mr Salim Mehson

Type of Application : Service Charges : Sections 27A and
20C of the Landlord and Tenant Act
1985 ("the 1985 Act"); Administration
Charges : Schedule 11 of the
Commonhold and Leasehold Reform
Act 2002 ("the 2002 Act")

Tribunal Members : Judge P R Boardman (Chairman), Mr
A J Mellery-Pratt FRICS

**Date and venue of
Hearing** : 18 March 2015
Poole Court and Tribunal Centre, The
Law Courts, Civic Centre, Park Road,
Poole, BH15 2NS

Date of Decision : 5 April 2015

DECISION

Introduction

1. Miss Bray is the leaseholder of Flat 5 under a lease dated 15 January 1987 and made between Anglo City Property Group Limited (1) and The Royal Bank of Scotland and David William Elias (2). Mr Dickson is the leaseholder of Flat 6 under a lease dated 8 November 1985 and made between Anglo City Property Group Limited (1) and Katrina Elizabeth Borthwick (2)
2. In a decision dated 16 July 2013 under case reference CHI/00HN/LIS/2013/0020 (“the Tribunal’s July 2013 decision”), the Tribunal determined an application by Mr Dickson in relation to certain items of service charge payable in relation to Flat 6 for the years ending 2011 and 2012 and, in respect of insurance only, 2013
3. This application is for the Tribunal to determine the payability of the same items of service charge in relation to Flat 5 as were determined in the Tribunal’s 2013 decision, other items of service charge in relation to Flats 5 and 6 for the years ending 2013, 2014, and 2015, and administration charges

Documents

4. The documents before the Tribunal are in a bundle with seven sections, as follows:
 - a. section 1 entitled “tenant’s summary”, pages 1 to 40; in this decision, page numbers in that section are referred to as section 1 page 1, section 1 page 2, and so on
 - b. section 2 entitled “2013 statement of case” pages 1 to 108; in this decision, page numbers in that section are referred to as section 2 page 1, section 2 page 2, and so on
 - c. section 3 entitled “2013 decision” pages 1 to 34; in this decision, page numbers in that section are referred to as section 3 page 1, section 3 page 2, and so on
 - d. section 4 entitled “landlord’s response”, the first 3 pages of which are not paginated, the next two pages are paginated “1 of 2” and “2 of 2”, and the last 45 pages are paginated “L1” to “L45”; in this decision, documents in that section are referred to as section 4 with the appropriate page numbers, if any
 - e. section 5 entitled “relevant service charge accounts” pages 1 to 22; in this decision, page numbers in that section are referred to as section 5 page 1, section 5 page 2, and so on
 - f. section 6 entitled “response to Sorda’s rebuttal” pages 1 to 7 and dated 10 February 2013, and a statement by the Applicants pages 1 to 8; in this decision, documents in that section are referred to as section 6 with the appropriate page numbers, if any
 - g. section 7 entitled “directions and applications” with no pagination; in this decision, documents in that section are referred to as section

7 and with the appropriate description

The issues

5. The parties' respective written cases in relation to each issue, as set out in the Applicants' statement of case, the Respondent's rebuttal, and the Applicants' response, were as follows
6. **Set off**
7. The Applicants stated (section 1 page 3) that no amount was owing by them, but rather that the Respondent owed at least £2685.28 to Mr Dickson, and at least £1345.46 to Ms Bray, as shown in the summaries at section 1 pages 37 to 39. The Applicants had paid the balances owing before April 2010, leaving a nil balance on 31 March 2010, as shown in the documents at section 1 pages 18 to 21. The amounts now owed by the Respondent to the Applicants should be offset against the amounts claimed by the Respondent for periods from and after April 2010, in accordance with section 19(2) of the 1985 Act, and the cases referred to at section 1 pages 4 and 5, including the Lands Tribunal decision in **Continental Property Ventures Inc v Jeremy White** LRX/60/2005
8. The Respondent stated (in its comments at section 4 pages 1 and 2 of 2) that:
 - a. the Tribunal's July 2013 decision had not determined a proportion payable for each item by each flat, but had simply determined a total amount payable for each item
 - b. the Applicants had not paid the amounts stated, and did not have a credit balance carried forward to be offset against
 - c. in relation to the budgeted advance service charge of £300 for 2013, the budget could not be claimed as an offset as the following items for management and electricity were the only actual charges in that year; the Applicants could not try to offset both
9. **Notices under section 146 of the Law of Property Act 1925 : section 1 pages 28 (Flat 6), 33 (Flat 6), 35 (Flat 5)**
10. The Applicants stated (at section 1 pages 15 to 17) that the Respondent had served section 146 notices, but that the wording did not comply with section 146, and, in any event, the Respondent had not complied with section 168 of the 2002 Act. The Respondent had claimed £995 in respect of Flat 6 and £756 in respect of Flat 5
11. The Respondent did not comment in writing on this issue
12. **Service charge proportions payable by the Applicants**
13. In the Tribunal's July 2013 decision the Tribunal gave the following

indications :

- a. the service charge provisions in the lease of Flat 6 provided for the Leaseholder to pay one eighth of the costs and expenses in the fourth schedule
 - b. the fourth schedule costs were costs relating to the “building” and the “said property” which were defined in recital (1) on page 1 of the lease as “the property known as 15-19 Lansdowne Road.....which comprises inter alia eight self contained flats”
 - c. the application before the Tribunal was an application under section 27A of the 1985 Act, and not, for example, an application to vary the lease under the Landlord and Tenant Act 1987
 - d. as such, the Tribunal’s powers were limited to determining the reasonableness and payability of the cost of each service charge item in issue, whereas in relation to those costs which did not apply to the whole of 15 to 19 Lansdowne Road the Tribunal was unable to determine the proportion payable by the Applicant/Leaseholder in the absence of a deed of variation of the lease
14. The Applicants stated (at section 1 page 3 and section 6 response to Sorda rebuttal dated 10 February 2013 page 1) that :
- a. the Applicants could “agree that $\frac{1}{4}$ of items pertaining solely to the residential area in that year and now $\frac{1}{8}$ (due to the new build development floors 3 and 4) of items pertaining solely to the residential area is agreeable, so long as the landlord agrees not to charge for items pertaining to the commercial area of the building”
 - b. “now that the new development has been completed and is included in the insurance increasing the premium the apportionment for insurance should be $\frac{1}{12}$ which corresponds exactly to the apportionment that the landlord has been charging so we can state with certainty that we are in agreement that the insurance apportionment should currently be $\frac{1}{12}$ ”
15. The Respondent did not comment in writing on this issue
- 16. Documents**
17. At section 6 response to Sorda rebuttal page 2 the Appellant stated that in the summary of accounts provided by the Respondent on 31 October 2014 the copy demands were not copies of the demands actually sent but were demands which had been changed to make them appear correct in order to give the impression that they were correctly demanded. “This can be proved by looking at invoice s499 original in st75 invoice s782 page 6 invoice s878 was not received at all except in the summary of accounts invoice s781 original page 7”
18. The Respondent did not comment in writing on this issue
- 19. Service charges for the years ending 2011 (service charge**

account at section 1 page 18), and 2012 (service charge account at section 1 page 59), (Flat 5 only)

20. The Applicants stated (in their application under section 27A of the 1985 Act at section 7 page 4 of 14) that the Tribunal's July 2013 decision was made in relation to Flat 6, and they were unsure whether the Respondent or the Tribunal agreed that the decision applied to Flat 5. If not, all the issues might have to be decided in relation to Flat 5
21. At paragraph 3 of the Tribunal's directions dated 1 October 2014 (at section 7 pages 2 and 3) the Tribunal identified as an issue whether the Respondent accepted that the decision in the Tribunal's July 2013 decision in relation to Flat 6 also applied in relation to Flat 5 in regard to service charges for the years ended 2011, 2012 and 2013, and, if not, why not
22. The Respondent stated (in its comments at section 4 pages 1 and 2 of 2) that the Tribunal's July 2013 decision did not apply to Flat 5 as :
- a. electricity £54.37 : the decision amount was based on incorrect information provided by Flat 6 and it was for Flat 5 to provide evidence that the amount charged was incorrect
 - b. sundry £25 : the Tribunal did not rule that sundry costs were not payable, but that the sundry costs were not itemised so that the Tribunal could not determine a figure; the Respondent had enclosed an itemised list of sundry costs in the current bundle and it was for Flat 5 to provide evidence that the amount charged was incorrect
 - c. carpet £165.97 : the decision amount was based on an assumption due to incorrect information provided by Flat 6 when neither of the Applicants was even a leaseholder at the time of the works; no actual quotes were provided by Flat 6 to substantiate the assumption; it was for Flat 5 to provide evidence that the amount charged was incorrect; the Respondent had included the invoice for the works plus a further quote from a second contractor in the current bundle and the decision could be made only on the actual invoice, not an assumption
 - d. roof £250 : it was for Flat 5 to provide evidence that the amount charged was incorrect
 - e. bay £250 : it was for Flat 5 to provide evidence that the amount charged was incorrect
 - f. windows £214 : the decision amount was based on an assumption; it was for Flat 5 to provide evidence that the amount charged was incorrect; the Respondent had included the invoice for the works plus a further quote from a second contractor in the current bundle and the decision could be made only on the actual invoice, not an assumption
23. **Insurance premium for the years ending 2011, 2012, and 2013 (Flat 5 only)**

24. Documents for year ending 2011 :
- a. insurance demand by Respondent dated 9 June 2010 section 2 page 31
 - b. insurance schedule 10 June 2010 from AXA 19 Lansdowne Road. Sum insured £793411. Amount payable [blacked out] section 2 page 32
 - c. insurance schedule from AXA 10 June 2010 15-19 Lansdowne Road. Sum insured £2380236. Amount payable £3817.87 section 2 page 33
25. Documents for year ending 2012 :
- a. insurance demand by Respondent 31 May 2011 section 5 relevant service charges page 3
26. Documents for year ending 2013 :
- a. insurance schedule 10 June 2012 from AXA 19 Lansdowne Road. Sum insured £859741. Amount payable £3553.38 section 4 page L.2
 - b. reminder invoice P&C (Insurance Brokers) Limited 6 June 2012 19 Lansdowne Road. Sum insured £859741. Premium £3563.38 section 4 page L.3
 - c. letter from P&C (Insurance Brokers Limited) dated 20 November 2012 acknowledging from Mr Mehson of Jordan Future Limited £753.29 additional premium due for 19 Lansdowne Road following transfer of cover from AXA to Lloyd's of London section 4 page L.4
 - d. insurance schedule from AXA 18 July 2012 19 Lansdowne Road. Sum insured £859741. Amount payable £3165.51 section 4 page L.5
 - e. letter from P&C (Insurance Brokers Limited) dated 29 October 2012 acknowledging from Miss N Mehson of Jordan Future Limited £3918.80 annual premium due for 19 Lansdowne Road section 4 page L.6
 - f. letter from P&C (Insurance Brokers Limited) dated 4 September 2012 explaining the calculation of the £753.29 additional premium due for 19 Lansdowne Road following transfer of cover from AXA to Lloyd's of London on 18 July 2012 section 4 page L.7
 - g. insurance demand by Respondent 12 September 2012 section 2 page 85
 - h. invoice P&C (Insurance Brokers) Limited 4 September 2012 19 Lansdowne Road. Sum insured £636845. Balance premium £753.29 section 4 page L.8
 - i. insurance schedule 19 Lansdowne Road from 18 July 2012. Sum insured £636845. Premium £3918.80 section 4 pages L.9 to L.12
27. The Applicants stated (in their application under section 27A of the 1985 Act at section 6 page 4 of 14) that the Tribunal's July 2013 decision was made in relation to Flat 6, and they were unsure whether the Respondent or the Tribunal agreed that the decision applied to Flat 5. If not, all the

issues might have to be decided in relation to Flat 5

28. The Respondent stated that :

- a. insurance £719.49 (year ending 2011) : the decision amount was based on an assumption due to incorrect information provided by Flat 6; no actual invoices were provided by Flat 6 to substantiate the assumption; it was for Flat 5 to provide evidence that the amount charged was incorrect; the Respondent had included the invoice for the insurance in the current bundle and the decision could be made only on the actual invoice, not an assumption
- b. insurance £566.95 (year ending 2012) : the decision amount was based on an assumption due to incorrect information provided by Flat 6 from the previous year; no invoices were provided by Flat 6 to substantiate the assumption; the Tribunal used an (incorrect) assumed figure from the previous year and simply added on what it felt insurers would increase the premium by; the Tribunal ignored the actual amount charged and did not take into account the substantial claims made since the previous year when making its assumption; it was for Flat 5 to provide evidence that the amount charged was incorrect; the Respondent had included the invoice for the insurance in the current bundle and the decision could be made only on the actual invoice, not an assumption
- c. insurance £537.21 (year ending 2013) : the decision amount was based on an assumption due to incorrect information provided by Flat 6 from the previous two years; no invoices were provided by Flat 6 to substantiate the assumption; the Tribunal used an (incorrect) assumed figure from the previous two years and simply added on what it felt insurers would increase the premium by; the Tribunal ignored the actual amount charged and did not take into account the substantial claims made when making its assumption; it was for Flat 5 to provide evidence that the amount charged was incorrect; the Respondent had included the invoice for the insurance in the current bundle and the decision could be made only on the actual invoice, not an assumption
- d. the Tribunal also did not take into account when making its assumptions that the premium paid was for 13 months, not 12 months; the Respondent changed insurers after one month due to the excess required by the insurers

29. Service charges for the year ending 2013 (Flats 5 and 6) : service charge account at section 5 page 20

30. The Appellant stated (in the schedule at section 4 page 2) in relation to maintenance £2.60, electricity £26.96, management £180, accounts £37.50, and bank £19.05, "also paid/should be offset/adjusted". At section 5 response to Sorda rebuttal page 2 the Appellant stated "advance service charge YR2012 therefore all maintenance included by that for YR2012 (name of landlord st75)". At section 5 response to Sorda rebuttal page 5 the Appellant stated that there was no requirement in the lease to

pay an advance service charge

31. The Respondent stated (in its comments at section 4 page 2 of 2) that the Applicants had not paid the amount stated and did not have a credit balance carried forward to be offset against

32. Service charges for the year ending 2014 (Flats 5 and 6)

33. The Applicants stated (in the schedule at section 4 page 2) in relation to the budgeted advance service charge of £300, the management charge of £150, and electricity £35.77, "also paid/should be offset/adjusted". At section 6 response to Sorda rebuttal page 2 the Appellant stated "advance service charge YR2013 therefore all maintenance included by that for YR2013 (name of landlord)". At section 6 response to Sorda rebuttal page 5 the Appellant stated that there was no requirement in the lease to pay an advance service charge. "The landlord is correct that the management and electricity are the only true charges apart from insurance in YR2013 which it is why it is so confusing that he has made his calculations as to outstanding balance in the summary of accounts (which he provided on the 31/10/14) are based solely on budgeted advance service charges with no regard to actual costs in the year especially he has added £300 to the balance for Yr2013 and £350 to the balance for Yr 2014 when his own summary shows the total expenditure was 185.77 (743.09/4) (rsca12)"

34. The Respondent stated (in its comments at section 4 page 2 of 2) in relation to the budgeted advance service charge of £300 for 2013, that the budget could not be claimed as an offset as the following items for management and electricity were the only actual charges in that year; the Applicants could not try to offset both; in relation to the management charge £150 and electricity £35.77, the Applicants had not paid the amount stated and did not have a credit balance carried forward to be offset against

35. Insurance premium for the year ending 2014 (Flats 5 and 6)

36. Documents :

- a. letter from P&C (Insurance Brokers) Limited 19 July 2013 19 Lansdowne Road premium £5375.10 reflecting the additional four flats that had been built on top of the building section 4 page L.13
- b. invoice P&C (Insurance Brokers) Limited 19 July 2013 19 Lansdowne Road. Sum insured £1136845. Balance premium £5375.10 section 4 page L.14
- c. insurance demand 22 July 2013 from Respondent Flat 5 share of annual premium £5375.10, £447.92 section 4 page L.39
- d. insurance demand 22 July 2013 from Respondent Flat 6 share of annual premium £5375.10, £447.92 section 4 page L.44

37. The Appellant stated (in the schedule at section 4 page 2) in relation to the

insurance premium of 447.92, “also paid/should be offset/adjusted”

38. The Respondent stated (in its comments at section 4 page 2 of 2) that the Applicants had not paid the amount stated and did not have a credit balance carried forward to be offset against

39. Service charges for the year ending 2015 (Flats 5 and 6) : service charge budget at section 5 page 13

40. The Appellant stated (in the schedule at section 4 page 2) in relation to the budgeted advance service charge of £350, “also paid/should be offset/adjusted”. At section 5 response to Sorda rebuttal page 2 the Appellant stated “advance service charge YR2014 and therefore all maintenance included by that for YR2014 (no summary of rights)”. At section 5 response to Sorda rebuttal page 5 the Appellant stated that there was no requirement in the lease to pay an advance service charge. “The landlord is correct that the management and electricity are the only true charges apart from insurance in YR2013 which it is why it is so confusing that he has made his calculations as to outstanding balance in the summary of accounts (which he provided on the 31/10/14) are based solely on budgeted advance service charges with no regard to actual costs in the year especially he has added £300 to the balance for Yr2013 and £350 to the balance for Yr 2014 when his own summary shows the total expenditure was 185.77 (743.09/4) (rsca12)”

41. The Respondent stated (in its comments at section 4 page 2 of 2) that the Applicants had not paid the amount stated and did not have a credit balance carried forward to be offset against

42. Insurance premium for the year ending 2015 (Flats 5 and 6)

43. Documents :

- a. intasure quotation 5 November 2014. Sum insured £1150000. Premium £2356.70 section 1 page 36
- b. Respondent’s demands 3 July 2014 for £262.54 (share of premium of £3150.50) section 1 pages 26 and 27
- c. biginsurance receipt 7 August 2014 from the Respondent 19 Lansdowne Road, Great Lakes Reinsurance (UK) plc, premium £3150 section 4 page L.15
- d. bgp property owners policy from 18 July 2014 19 Lansdowne Road. Sum insured £1150000. Premium £3150.50 section 4 page L.16

44. The Appellant stated (in the schedule at section 4 page 2) in relation to the insurance premium of 262.54, “also paid/should be offset/adjusted”. At section 5 response to Sorda rebuttal page 2 the Appellant stated “insurance 2014 (name of landlord), (rsca 2, 19)”

45. The Respondent stated (in its comments at section 4 page 2 of 2) that the

Applicants had not paid the amount stated and did not have a credit balance carried forward to be offset against

The leases

46. For the purposes of these proceedings the material parts of the lease of Flat 5 are as follows :

Preamble

(1) The Lessor is the registered proprietor.....of the property known as 15-19 Lansdowne Road Bournemouth.....(hereinafter called "the Building") which comprises inter alia eight self-contained flats and all of which said premises are hereinafter called "the said property".....

Clause 1 [demise]

.....ALL THAT.....Flat No 5 15-19 Lansdowne Road.....including the floors and ceilings of the Flat (and the joist and beams to which the said floors and ceilings are attached) and the interior (but not the exterior) faces of such parts of the external walls as bound the Flat all windows and window frames of the Flat.....

Clause 3: [Lessee's covenants]

(c) not to make any structural alterations or additions to the demised premises.....without the previous consent of the Lessor in writing first obtained such consent not to be unreasonably withheld

(d) to pay all charges expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purposes of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court

Clause 4 : [Lessee's covenants with the Lessor and with the owners or lessees of the other flats comprised in the Building]

(i) keep the demised premises (other than the parts thereof comprised and referred to in paragraph (b) of clause 5 hereof) and all windows.....thereto belonging.....in good and substantial repair and condition and in particular.....

(a) so as to support shelter and to protect the parts of the building other than the demised premises

(b) to replace when necessary the joists and beams included in this demise.....

(ii) contribute and pay to the Lessor from time to time.....one equal eighth part of the costs and expenses mentioned in the fourth schedule hereto.....

Clause 5 : [Lessor's covenants]

(b)the Lessor will

(i) as and whenever necessary during the term hereby created maintain and repair

(a) the roof (including the timbers).....

(b) the main structure of the Building

(c) the entrance porch.....

(d) the drains.....

(e) the foundations of the Building below the level of the joists supporting the Ground Floor Flat [sic] of the Building

(f) all other parts of the said property used in common by the Lessee with the Lessor or the owners or occupiers of the the other Flat [sic] forming part of the said property

(ii) paint the exterior of the said property.....

(iii) at all times during the said term keep the Building insured.....

First Schedule [rights included in this lease]

7(a) the right in common with the Lessor and the owners or lessees of the other flats comprised in the Building and all others having the like right to use for purposes only of access to and egress from the Flat and the car parking space referred to in sub-clause (b) of this clause all such parts of the Building and the said property as afford access thereto

(b) the right between Monday and Friday in each week between the hours of 6.00 pm and 8.30 am in each successive period of 24 hours only to park one private motor vehicle.....on the car parking place shown edged green on plan and coloured brown on the said plan numbered 3 and the same right at all times between 8.30 am on every Saturday morning and 8.30 am on each Monday morning only

Fourth Schedule

Cost and expenses.....in respect of which the Lessee is to contribute under clause 4(ii) of this lease

1. The expenses of maintaining repairing and renewing :
 - a. the roof (including the timbers) the gutters rainwater pipes and chimneys of the Building
 - b. the main structure of the Building

- c. the entrance porch boundary walls fences driveway and paths of the said property
 - d. the drains water and gas pipes and electric cables and wires under or upon the said property and enjoyed or used by the Lessee in common with the occupier of the other flat forming part of the said property
 - e. the foundations of the Building below the level of the joist supporting the ground floor of the building
 - f. all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the other flat comprised in the said property
2. The expenses of painting the exterior of the said property.....
 3. The expenses of insuring the said property pursuant to clause 5(b)(iii) of this lease
 4. The costs charges and expenses of managing agents appointed by the Lessor to manage the said property and to carry out the Lessor's obligations under the lease

47. For the purposes of these proceedings the material parts of the lease of Flat 6 are as follows :

Preamble

(1) The Lessor is the registered proprietor.....of the property known as 15-19 Lansdowne Road Bournemouth.....(hereinafter called "the Building") which comprises inter alia eight self-contained flats and all of which said premises are hereinafter called "the said property".....

Clause 1 [demise]

.....ALL THAT.....Flat No 6 15-19 Lansdowne Road.....including the floors and ceilings of the Flat (and the joist and beams to which the said floors and ceilings are attached)

Clause 3: [Lessee's covenants]

- (c) not to make any structural alterations or additions to the demised premises.....without the previous consent of the Lessor in writing first obtained such consent not to be unreasonably withheld*
- (d) to pay all charges expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purposes of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court*

Clause 4 : [Lessee's covenants with the Lessor and with the owners or lessees of the other Flat [sic] comprised in the Building]

(i) keep the demised premises (other than the parts thereof comprised and referred to in paragraph (b) of clause 5 hereof) and all windows.....thereto belonging.....in good and substantial repair and condition and in particular.....

(a) so as to support shelter and to protect the parts of the building other than the demised premises

(b) to replace when necessary the joists and beams included in this demise.....

(ii) contribute and pay to the Lessor from time to time.....one equal eighth part of the costs and expenses mentioned in the fourth schedule hereto.....

Clause 5 : [Lessor's covenants]

(b)the Lessor will

(i) as and whenever necessary during the term hereby created maintain and repair

(a) the roof (including the timbers).....

(b) the exterior walls of the Building

(c) the entrance porch.....

(d) the drains.....

(e) the foundations of the Building below the level of the joists supporting the Ground Floor Flat [sic] of the Building

(f) all other parts of the said property used in common by the Lessee with the Lessor or the owners or occupiers of the the other Flat [sic] forming part of the said property

(ii) paint the exterior of the said property.....

(iii) at all times during the said term keep the Building insured.....

First Schedule [rights included in this lease]

7(a) the right of access at all times on foot only over the driveway and pathways coloured brown on the said plan numbered 2

(b) the right between Monday and Friday in each week between the hours of 6.00 pm and 8.30 am in each successive period of twenty four hours only to park one private motor vehicle.....on the parking place edged green on plan numbered 2.....and the same right at all times between 8.30 am on every Saturday morning and 8.30 am on each Monday morning only

Fourth Schedule

Cost and expenses.....in respect of which the Lessee is to contribute under clause 4(ii) of this lease

5. *The expenses of maintaining repairing and renewing :
 - g. the roof (including the timbers) the gutters rainwater pipes and chimneys of the Building
 - h. the exterior walls of the Building
 - i. the entrance porch boundary walls fences driveway and paths of the said property
 - j. the drains water and gas pipes and electric cables and wires under or upon the said property and enjoyed or used by the Lessee in common with the occupier of the other flat forming part of the said property
 - k. the foundations of the Building below the level of the joist supporting the ground floor of the building
 - l. all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the other flat comprised in the said property*
6. *The expenses of painting the exterior of the said property.....*
7. *The expenses of insuring the said property pursuant to clause 5(b)(iv) [sic] of this lease*
8. *The costs charges and expenses of managing agents appointed by the Lessor to manage the said property and to carry out the Lessor's obligations under the lease*
9. *The costs of the paladin referred to*

Inspection

48. The Tribunal inspected the property on the morning of the hearing on 18 March 2015. Also present were Mr Dickson and Mr Mehson
49. Flats 5 and 6 were flats on the first floor in 19 Lansdowne Road, which itself formed part of a block comprising 15, 17 and 19 Lansdowne Road. The ground floor of 19 Lansdowne Road comprised a commercial unit, namely Downes Wine bar. Flats 5 and 6 were two of the four flats originally in 19 Lansdowne Road, the others being flats 7 and 8 (on the second floor). Each of those four flats had two windows on the front elevation, one flush with the exterior wall, and the other a bay window. The bays originally extended over two floors, one for flats 6 and 8, and the other for flats 5 and 7. There was a small flat roof over the bay for flats 6 and 8. There was now no such small flat roof over the bay for flats 5 and 7 as that bay had now been extended upwards, following the construction above 19 Lansdowne Road of a further four flats in a new third floor, and a new fourth floor. The edging round the windows for flats 6, 7 and 8 were clad in UPVC. The facing of the exterior wall on the first and second floors was painted brickwork
50. At the rear was a tarmac car park. 19 Lansdowne Road was on the right hand end of the building, looking from the rear. 13 Lansdowne Road was

on the left hand end. 15 and 17 Lansdowne Road were in between. The parties pointed out a dividing line in the car park delineating the boundary between 13 and 15 Lansdowne Road. At the rear of 17 Lansdowne Road was a lift shaft. Mr Mehson drew the Tribunal's attention to various roofs above different parts of the building at the rear of 15, 17, and 19 Lansdowne Road, in addition to the main roof

51. At the rear of 19 Lansdowne Road was an external metal staircase, leading to, amongst others, a communal landing on the first floor of about 4 square metres for flats 5 and 6. Stairs led to a further landing for flats 7 and 8. The landings and stairs were carpeted. The carpet was in reasonable condition. There were two UPVC windows

The hearing

52. Miss Bray attended most of the afternoon of the hearing, but not the morning. She confirmed that Mr Dickson was speaking on her behalf at the hearing

Procedural matters at the hearing

53. Mr Mehson objected to Judge Boardman chairing the Tribunal. He said that Judge Boardman had chaired the Tribunal in July 2013 and had formed views about the case and would not be impartial. Judge Tildesley, who was present at the current hearing but as an observer only, had issued directions on 1 October 2014, and the Tribunal had indicated that Judge Tildesley would be chairing the Tribunal
54. Mr Dickson said that the fact that Judge Boardman had chaired the Tribunal in July 2013 meant that Judge Boardman had a detailed knowledge of the case, and Mr Dickson had no objection to Judge Boardman chairing the present hearing
55. After a short adjournment of the hearing to enable the Tribunal to consider the matter, the Tribunal indicated that :
 - a. although Judge Tildesley had issued directions in October 2014, the Tribunal had not at any time indicated that Judge Tildesley would be chairing the present hearing
 - b. any concerns about the Tribunal's July 2013 decision would have been matters for an appeal against that decision, and not for complaint about the composition of the panel at the present hearing
 - c. there would be no question of unfairness; where appropriate the application would be looked at afresh, and Judge Boardman's knowledge of the previous decision would help to achieve the overriding objective set out in paragraph 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, namely to enable the Tribunal to deal with the case fairly and justly

- and proportionately
- d. in relation to the question whether the Tribunal's July 2013 decision in relation to Flat 6 should also apply in relation to Flat 5, the Tribunal would be asking in relation to Flat 5 whether there was now any additional evidence now available which had not been available in relation to Flat 6 at the previous hearing in July 2013
 - e. it was for the Tribunal itself, and not the parties, to choose the composition of the Tribunal panel
 - f. in all the circumstances, it was appropriate for Judge Boardman to chair the present Tribunal

The issues

56. The parties' further submissions, and the Tribunal's decision, in respect of each issue, were as follows

Year 2010/2011 Flat 5 only

57. Electricity cost £217.49

58. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

59. Mr Mehson said that he disagreed with the Tribunal's 2013 decision. The Respondent had paid £217.49, so the Tribunal had been wrong to decide that only £87.68 was payable. The bills at section 2 pages 10 and 11 were for only part of the year, but the amounts shown due on those bills alone were £30.50 and £85.71

60. When the Tribunal put it to Mr Mehson that all his current submissions in that respect had been expressly taken into account in the Tribunal's July 2013 decision, that the figures for standing charge and electricity consumed in the bills at section 2 pages 10 and 11 were only £30.83 and £14.57 and that the rest of the figures referred to in the bills were previous balances and credits, Mr Mehson said that he had not gone into detail, and it was for Miss Bray to prove her case

61. The Tribunal's decision

62. The Tribunal finds that :

- a. in its July 2013 decision the Tribunal found in relation to Flat 6 that the amount payable by way of service charge for this item was £87.68, of which the Applicant/Leaseholder was liable for a proportion which the Tribunal is unable to determine for reasons already given
- b. there is no new evidence in relation to Flat 5 regarding this item which had not been before the Tribunal when it had made its July

2013 decision in relation to Flat 6

- c. having considered all the evidence, the Tribunal finds in relation to Flat 5 that the amount payable by way of service charge for this item is £87.68, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

63. Management charges £960

64. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

65. Mr Mehson said that he disagreed with the Tribunal's July 2013 decision because the managing agents had had to carry out a considerable amount of extra work, such as providing details to the party wall surveyors

66. When the Tribunal put it to Mr Mehson that all his current submissions in that respect had been expressly taken into account in the Tribunal's July 2013 decision, Mr Mehson said that there was no new evidence in this respect

67. The Tribunal's decision

68. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, the amount payable by way of service charge for this item is £600, plus VAT if Salmore Property Limited were then registered for VAT, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

69. Book keeping and accounts fees £420

70. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

71. Mr Mehson said that there was not

72. The Tribunal's decision

73. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, this item is not payable by way of service charge

74. Sundry expenses £100

75. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

76. Mr Mehson conceded that the Respondent had not enclosed an itemised list of sundry costs in the current bundle, despite the claim to have done so in section 4. However, a considerable amount of work had been carried out by the managing agents in dealing with the party walls surveyors

77. The Tribunal's decision

78. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, this item is not payable by way of service charge

79. Cleaning £528.77

80. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

81. Mr Dickson said that Miss Bray had visited the property in February 2010 before purchasing Flat 5, and no cleaning had taken place

82. The Tribunal's decision

83. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, the sum of £274.38 in respect of this item is not payable by way of service charge

84. Rubbish clearance £408.34

85. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

86. Mr Dickson said that there had been no rubbish clearance for four years. The car park referred to in the lease extended only to the line noted at the Tribunal's inspection

87. The Tribunal's decision

88. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, the amount payable by way of service charge for this item is £408.34, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

89. Carpet £663.88

90. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

91. Mr Dickson said that Miss Bray had stated (at section 6 page 3 paragraph 9) that she had seen the carpet in February 2010 in the same condition as the carpet which was supposed to have been replaced in April 2010, and the charge was in the financial year April 2010 to April 2011. No receipt had ever been provided. Mr Dickson said that the carpet which Miss Bray saw when she moved in in June 2010 was the same carpet as she had seen in February 2010

92. Mr Mehson said that that was not evidence, but just Miss Bray's opinion. Mr Mehson conceded that there was no invoice and no further quote from a second contractor in the current bundle, despite the reference in each respect in section 4 page 1 of 2. Mr Mehson said that the Tribunal's 2013 decision had found that £400 was payable, but had not mentioned VAT. The Respondent had been registered for VAT at that time

93. *The Tribunal's decision*

94. The Tribunal finds that, having now considered Miss Bray's evidence that she had seen the carpet in February 2010 in the same condition as the carpet which was supposed to have been replaced in April 2010, which was not before the Tribunal in July 2013, and having taken account of the fact that there is no invoice before the Tribunal for this item, the Tribunal is not satisfied that this item is payable by Miss Bray by way of service charge

95. Buildings insurance £2877.96

96. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

97. Mr Mehson said that there was not, but that the premium had been paid by the previous owners of Flats 5 and 6, not the Applicants, and the Applicants were therefore not entitled to challenge the amount

98. *The Tribunal's decision*

99. The Tribunal finds that :

- a. the normal conveyancing practice on the sale of a leasehold flat is, as the Tribunal finds from its collective knowledge and expertise in this area, that a seller who has paid an outgoing, such as an

insurance premium, in respect of a period which includes a period after the sale, will collect from the buyer on completion of the sale a proportion of the cost

- b. it is more likely than not that Miss Bray will have had to pay a proportion of the insurance premium accordingly
- c. Miss Bray is therefore entitled to challenge the payability of the insurance premium
- d. for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, the amount payable by way of service charge for this item is £1536, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

Year 2011/2012 Flat 5 only

100. Management charges £1000

101. The parties agreed that the issues were the same as for the previous year, and that there was no new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

102. *The Tribunal's decision*

103. The Tribunal finds that a reasonable management fee for the year in question would have been no more than the fee which the Tribunal has found to be payable for the previous year, namely £150 a flat, namely £600, plus VAT if Salmore Property Limited were registered for VAT, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

104. Book keeping and accounts fees £400

105. The parties agreed that the issues were the same as for the previous year, and that there was no new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

106. *The Tribunal's decision*

107. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, this item is not payable by way of service charge

108. Sundry expenses £150

109. The parties agreed that the issues were the same as for the previous year, and that there was no new evidence in relation to Flat 5 which had

not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

110. *The Tribunal's decision*

111. The Tribunal finds that this item is not payable by way of service charge for the same reasons as for the similar item for the previous year

112. **Rubbish clearance £240**

113. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

114. Mr Mehson said there was not

115. Mr Dickson said that there had been no collection of rubbish for the last four years

116. *The Tribunal's decision*

117. The Tribunal finds, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, that this item is payable by way of service charge, and that the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

118. **Roof repairs (renewing of flat roofs above bay windows) £1000**

119. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6, and whether they were submitting that the Tribunal's decision in relation to Flat 5 should be different from its July 2013 decision in relation to Flat 6 because of the difference in the wording of clause 5(b)(i)(b) and paragraph 1(b) of the fourth schedule to the two leases

120. Mr Mehson submitted that he had pointed out to the Tribunal at the inspection the various roofs at the rear of the building in addition to the main roof. The reference to "the roof" in paragraph 1(b) of the fourth schedule to the lease was therefore simply another example of the leases being poorly drafted, which should not penalise the Respondent. The bays, and the roofs above the bays, were part of the main structure

121. Mr Dickson said the lease of Flat 5 clearly defined the flat as including window frames. The bays were window frames, and were therefore included in the flat, and were accordingly not part of the main structure

122. *The Tribunal's decision*

123. The Tribunal finds that:

- a. there is no express provision in the fourth schedule of the lease of Flat 5 to enable the cost of renewing the flat roofs above the bay windows to be included in the service charge, in that :
 - clause 1 of the lease includes “all windows and window frames of the Flat” as part of the demised premises
 - the bay to Flat 5 is, as the Tribunal finds, included in the expression “windows and window frames of the Flat”
 - paragraph 1(a) of the fourth schedule to the lease of Flat 5 refers only to “the roof”, not to “roofs”, and, as the Tribunal finds, refers only to the main roof of the building, and not to the coverings on the tops of the bays; in that respect, the Tribunal does not accept Mr Mehson’s submission that the reference to “roof” is an example of the bad drafting referred to in the Tribunal’s July 2013 decision in relation to Flat 6, as the Tribunal finds that :
 - there are differences between the two leases, including the correction of the reference to the landlord’s insuring obligation in 5(b)(iii) in paragraph 3 of the fourth schedule to the lease of Flat 5, instead of the erroneous reference to clause 5(b)(iv) in paragraph 3 of the fourth schedule to the lease of Flat 6
 - if the draftsman of the lease of Flat 5 had intended to correct paragraph 1(a) of the fourth schedule by substituting the word “roofs” for the word “roof”, it would have been very easy to do so
 - paragraphs 1(b) and 2 of the fourth schedule to the lease of Flat 5 draw a distinction, as the Tribunal finds, between “the main structure of the Building” and the “exterior of the said property”, and, whilst the bays could be regarded as part of the “the exterior” they cannot, by the ordinary and plain meaning of the words, be regarded as part of the “main structure” any more than any of the other windows and frames in the building could be so regarded
 - they do not form part of “all other parts of the said property used in common” for the purposes of paragraph 1(f) because they are not in any sense used in common and, contrary to Mr Mehson’s submission, the roofs of the bays protrude from, and do not provide support for, any other part of the building
- b. there is no implied provision in that respect, because :
 - it would have been very easy for such a provision to have been included if the parties to the lease had so intended
 - on the contrary, the detailed list of items in the fourth schedule implies that the list is exhaustive
 - the mere fact that a landlord has carried out work which has

benefited a tenant does not of itself imply that the landlord can include the cost of doing so in a service charge

124. This item is not payable by way of service charge

125. **Bay repairs (window cladding) £1000**

126. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

127. Mr Dickson said that repairs had been carried out to the bay of Flat 5 in 2009

128. Mr Mehson said that the cladding had been put on and paid for by the insurance company after the fire

129. *The Tribunal's decision*

130. The Tribunal finds, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, that this item is not payable by way of service charge

131. **Communal entrance and windows £856**

132. At paragraph 184 of the Tribunal's July 2013 decision the Tribunal found that the amount payable by way of service charge for that item was £250, of which Mr Dickson was liable for a proportion which the Tribunal was unable to determine for reasons already given

133. However, this item has not been raised as an issue before the Tribunal in relation to Flat 5 either in the papers before the Tribunal or at the hearing, and the Tribunal accordingly makes no determination about it in this decision

134. **Fire risk safety assessment £203.38**

135. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

136. Both parties said that there was not

137. *The Tribunal's decision*

138. The Tribunal finds that, for reasons given in relation to Flat 6 in the Tribunal's July 2013 decision, the amount payable by way of service

charge for this item is therefore £203.38, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

139. Buildings insurance £566.95 (the proportion demanded by the Respondent)

140. The Tribunal asked the parties whether there was any new evidence in relation to Flat 5 which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6

141. Mr Mehson produced a document purporting to be the insurance schedule for the year in question, and applied for it to be admitted in evidence, even though he had not previously submitted it to be included in the bundles before the Tribunal

142. The Tribunal gave Mr Dickson time to consider the document. He said that he had no objection to its being admitted in evidence. The Tribunal arranged for copies for Mr Dickson and for the Tribunal

143. It contained, amongst others, the following details :

- a. insured : Jordan Future Limited
- b. effective date : 10 June 2011
- c. renewal date : 10 June 2012
- d. premises : 19 Lansdowne Road
- e. occupancy : sandwich bar and wine bar and flats above let to professionals
- f. buildings sum insured : £833,082
- g. total premium : £1734.47

144. Mr Dickson said that the schedule also referred to loss of rent cover of £28500, which presumably referred to the commercial premises on the ground floor, and to which part of the premium related. Miss Bray should not have to pay that part of the premium

145. However, the Tribunal indicated that this point had been raised in relation to Flat 6 and no deduction had been made in that respect in the Tribunal's July 2013 decision

146. The Tribunal's decision

147. The Tribunal finds that the premium charged by the insurer is a reasonable sum for the cover provided, that the sum was reasonably incurred, and that the amount payable by way of service charge for this item is therefore £1734.47, of which the Applicant Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given

Year 2012/2013

148. Buildings insurance £537.21 (the proportion demanded by the Respondent) – Flat 5 only

149. Mr Dickson accepted that there were more documents now before the Tribunal in relation to Flat 5 than there had been in July 2013 in relation to Flat 6. They showed that the building sum insured had decreased from £833082 (AXA schedule submitted at the hearing by Mr Mehson) to £636845 (insurance schedule at section 4 pages L.9 to L.12), but that the premium had increased dramatically, namely to £3918.80 (insurance schedule at section 4 pages L.9 to L.12)

150. Mr Mehson said that the premium probably reflected the insurance claim for £50000 following the fire which had burnt Miss Bray's flat, and also various insurance claims relating to the commercial premises. The Respondent had initially paid the premium demanded by AXA, but had then noticed the large and unacceptable excess, and had, with difficulty (because no insurers were initially interested) changed insurers to Lloyds. The insurance for that year was for the existing building at 19 Lansdowne Road, and did not include the new flats. The insurance for that year was accordingly from 10 June 2012 to 17 July 2013, namely 13 months, not 12, and cost a total of £4297.67, made up as follows :

Premium paid to Lloyds (for 12 months from 18 July 2012) section 4 pages L.9 to L.12	£3918.80
Net premium paid to AXA (for period 10 June 2012 to 18 July 2012) section 4 page L.7	£378.87
	£4297.67

151. The proportion payable by the four original flats in 19 Lansdowne Road was 50% of that figure (the commercial premises paying the other 50%), and each flat paid 25% of that 50%, namely £537.21. Mr Mehson accepted that the premium was high, but said that he owned four of the flats, so he himself had had to pay a proportion of the higher premium. The sum insured was reasonable, and the insurance had been arranged through reputable brokers

152. Mr Dickson said that the documents provided should be approached with caution in the light of the difficulties with the AXA schedules at section 2 pages 32 and 33 which had been noted in the Tribunal's July 2013 decision in relation to Flat 6 in respect of the year ending 2011

153. *The Tribunal's decision*

154. The Tribunal, having taken account of all the evidence and submissions now before the Tribunal, and, in particular, the statements in the letter from P&C dated 4 September 2012 at R page 44 that the new Lloyds premium for 19 Lansdowne Road for the year in question was £3918.80, that the figure already paid to AXA was £3553.48, and that the excess had been considerably reduced, finds that:
- a. it was reasonable for the Respondent to instruct its brokers to seek to change insurer in the light of the conditions now being imposed by the current insurer
 - b. it was nevertheless prudent of the Respondent to pay the premium demanded the existing insurer in the meantime to ensure continuity of cover
 - c. although the premium demanded by the new insurer was considerably higher, the Tribunal accepts that the new policy had been reasonably arranged by the Respondent's brokers in the ordinary course of business, and that the adverse claims history had had a considerable effect on the new premium, and the Tribunal finds that in all the circumstances the premium was reasonably incurred and was not excessive
155. The amount payable by way of service charge for this item is therefore £4297.67 for the period 10 June 2012 to 17 July 2013, of which Miss Bray is liable for a proportion which the Tribunal is unable to determine for reasons already given
156. **Year 2012/2013 : other service charge items : Flats 5 and 6 (service charge account section 5 page 11)**
157. **Maintenance £10.38**
158. Mr Dickson said that this item was not in issue before the Tribunal
159. **Electricity £107.83**
160. Mr Dickson said that this item was not in issue before the Tribunal
161. **Management charges £720**
162. Mr Dickson said that this item was in issue before the Tribunal for the same reason as for previous years. He said that the Tribunal's July 2013 decision had found in relation to previous years that the sum payable for this item was £600 plus VAT if Salmore Limited were registered for VAT
163. Mr Mehson said that Salmore Limited had initially been registered for VAT, but was no longer registered. Salmore Limited had increased its fee to £720 with no VAT payable in addition
164. *The Tribunal's decision*

165. The Tribunal finds that there is no evidence before the Tribunal to persuade the Tribunal that the management charges should be any higher than the amount found to be reasonable for the previous two years, namely £150 a flat, namely £600, plus VAT if Salmore Property Limited were registered for VAT, of which the Applicants are each liable for a proportion which the Tribunal is unable to determine for reasons already given

166. Bookkeeping/accounts £150

167. Mr Dickson said that this item was in issue before the Tribunal for the same reason as for previous years

168. Mr Mehson said that there was no new evidence in relation to Flats 5 and 6 for this year which had not been before the Tribunal when it had made its July 2013 decision in relation to Flat 6 for previous years

169. *The Tribunal's decision*

170. The Tribunal finds that this item is not payable by way of service charge for the same reasons as for the similar item for the previous year

171. Bank charges £76.20

172. Mr Dickson said that this item was in issue before the Tribunal. There was no corroborative evidence to show that the Respondent had incurred this sum

173. Mr Mehson said that the Respondent had provided a breakdown of the sum of £76.20 at section 4 page 38, but accepted that the Respondent had not provided statements or other corroborative documents from the bank

174. *The Tribunal's decision*

175. The Tribunal finds that :

- a. the breakdown at section 4 page 38 is simply a breakdown provided by the Respondent, and is not corroborative evidence of the Respondent's evidence, as such
- b. in the absence of any such corroborative evidence, for example, from the bank in question, the Tribunal is not satisfied that the claimed charges have been incurred
- c. this item is not payable by way of service charge

Year 2013/2014

176. Insurance : £5375.10 (£447.92 demanded from each of Flats

5 and 6)

177. Mr Dickson said that he had accepted that the sum insured (£1136845) was reasonable, to include the four new flats, but said that the premium was excessive. However, he had no corroborative evidence except the Intasure quotation dated 5 November 2014 (section 1 page 36) in relation to the following year

178. *The Tribunal's decision*

179. The Tribunal finds that :

- a. it is clear from the brokers' letter dated 19 July 2013, at section 4 page L.13, that the brokers had approached various market sources, and the Tribunal accepts that the insurance was reasonably arranged in the normal course of business
- b. it is also clear from the brokers' letter that the increased sum insured included the four new flats, and the tribunal notes that Mr Dickson is not challenging that figure
- c. in all the circumstances, the premium demanded was reasonably incurred and was not excessive
- d. the amount payable by way of service charge for this item is therefore £5375.10, of which the Applicants are each liable for a proportion which the Tribunal is unable to determine for reasons already given

180. **Budgeted service charge demand £300**

181. Mr Dickson said that this item was in issue before the Tribunal

182. In answer to questions from the Tribunal, Mr Mehson said that :

- a. there was no service charge account for that year, only the summary at section 5 page 12
- b. there was no formal budget sheet either, but the demand for payment was at section 5 page 7
- c. Mr Mehson was unable to direct the Tribunal's attention to any clause in the leases of Flats 5 and 6 specifically permitting the landlord to demand a budgeted service charge in advance; however, he said that it was covered by clause 4(ii) of the lease of Flat 5 and by the fourth schedule paragraph 4, in that it was the responsibility of managing agents to provide a budget; in any event, the Tribunal had found in 2013 that the lease of Flat 6 had been badly drafted, so that the Respondent should not be penalised even if there were no specific provision for a budgeted service charge

183. *The Tribunal's decision*

184. The Tribunal finds that :

- a. the only provision in the leases rendering the tenant liable for service charge, to which the Tribunal's attention has been drawn, is clause 4(ii) in each case, which requires the tenant to *contribute and pay to the Lessor from time to time.....one equal eighth part of the costs and expenses mentioned in the fourth schedule hereto.....*
- b. the expression "costs and expenses", by its ordinary and plain meaning, refers to costs and expenses which have been incurred, and not to costs and expenses which have not yet been incurred
- c. if the draftsman had intended the tenant to be liable to contribute to future costs and expenses by paying a budgeted service charge in advance of the costs and expenses being incurred, it would have been very easy so to provide
- d. the requirement in paragraph 4 of the fourth schedule for the tenant to pay by way of service charge the costs charges and expenses of managing agents to manage the property and to carry out the landlord's obligations under the lease is, contrary to Mr Mehson's submissions, such a provision; it is simply a provision enabling the landlord to include the managing agents reasonable fees in the service charge
- e. in the absence of any such provision in the lease, the Respondent is not entitled to demand a budgeted service charge
- f. this sum is not payable by way of service charge

185. Management fee £150

186. Mr Dickson said that this item was not in issue before the Tribunal

187. Electricity £35.77

188. Mr Dickson said that this item was not in issue before the Tribunal

Year 2014/2015

189. Insurance premium £3150.50 (£262.54 demanded from each of Flats 5 and 6)

190. Mr Dickson said that this item was in issue before the Tribunal. He had obtained the quotation of £2356.70 from Intasure (section 1 page 36) on a like-for-like basis and with a full insurance case history of 19 Lansdowne Road provided by the brokers

191. The Tribunal indicated that it was bound by certain decided cases which indicated that the test for payability was not whether the insurance could be obtained cheaper elsewhere, but whether the insurance had been reasonably arranged in the ordinary course of the Respondent's business

192. Mr Mehson said that the Respondent had instructed different, but

equally reputable, brokers, namely Bournemouth Insurance Group, who had arranged the insurance with Great Lakes Reinsurance (UK) plc, who were very reputable insurers, and the premium was cheaper than the previous year

193. *The Tribunal's decision*

194. The Tribunal finds that there have been many decided cases on the question whether a premium charged by a landlord is unreasonable because it was not the cheapest available

195. For example, 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

196. 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

197. Again, 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

198. 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

199. The Tribunal finds that :

- a. the insurer's schedule at section 4 page L.16 indicates a sum insured of £1150000 which has not been challenged by Mr Dickson
- b. indeed, the Intasure quotation obtained by Mr Dickson is for the same sum insured
- c. the Tribunal accepts that the insurance was reasonably arranged in the ordinary course of business, having been arranged with a different insurance company through different brokers at a considerably cheaper premium than the previous year, namely £3150.50 compared with £5375.10
- d. although the premium is higher than that quoted by Intasure, it is not so much higher as to be excessive
- e. in all the circumstances, the premium of £3150.50 was reasonably incurred
- f. the amount payable by way of service charge for this item is therefore £3150.50, of which the Applicants are each liable for a proportion which the Tribunal is unable to determine for reasons already given

200. Budgeted service charge demand £350

201. Mr Dickson said that this item was in issue before the Tribunal

202. The parties agreed that the issues were the same as for the previous year

203. *The Tribunal's decision*

204. The Tribunal finds that this item is not payable by way of service charge for the same reasons as for the similar item for the previous year

Set Off

205. The Tribunal indicated at the hearing that its preliminary view, having considered the parties written submissions, but subject to hearing further oral submissions, was that it was not appropriate for the Tribunal to determine the Applicants' claim to set off. The Lands Tribunal decision in

Continental Property Ventures Inc v Jeremy White LRX/60/2005 had concerned a claim to set off damages for an earlier breach of a landlord's repairing covenant against the landlord's current claim for the cost of carrying out those repairs, where the current cost was said to be higher than it would have been if the landlord had carried out the repairs earlier. That was a very different case from the present case, where the Applicants' claim was to set off against service charge demands amounts said to be owed by the landlord, or not payable by the Applicants, following the Tribunal's July 2013 decision. That was essentially an accounting exercise, which was more appropriate for the county court. In any event, the Tribunal was unable to decide the amounts or payability of the Applicants' proportions of service charge items found by the Tribunal to be payable for reasons already set out in the Tribunal's July 2013 decision, and summarised at paragraph 13 of this decision

206. Mr Dickson nevertheless urged the Tribunal to determine the issue, and referred to the principles of legal and equitable set off and to the decided cases mentioned at section 1 pages 4 and 5

207. Mr Mehson said that there could be no set off, because the Applicants had not paid what they had claimed to have paid

208. *The Tribunal's decision*

209. The Tribunal finds that :

- a. as indicated to the parties at the hearing of this application, this is not an appropriate case for the Tribunal to exercise its power to deal with set off
- b. it is a very different case from that in **Continental Property Ventures Inc v Jeremy White**, where the set off was directly related to the particular service charge demand involved, whereas here, the set off claimed is essentially an accounting exercise where the Appellants are claiming that there should be set off against the landlord's current service charge demands sums not payable by the Appellants as a result of the Tribunal's July 2013 decision, and the Respondent appears to be denying that payments claimed to have been made have indeed been made
- c. however, as again indicated to the parties at the hearing, there is an even more fundamental reason why this is not an appropriate case for the Tribunal to exercise its power to deal with set off, namely that the Tribunal cannot determine the amounts or payability of the Applicants' proportions of service charge items found by the Tribunal to be payable for reasons already set out in the Tribunal's July 2013 decision, and summarised at paragraph 13 of this decision
- d. in the absence of a deed of variation, or a variation following an application to the Tribunal under section 35 or 37 of the Landlord and Tenant Act 1987 ("the 1987 Act"), it seems to the Tribunal that the Respondent is unable to enforce the service charge provisions

in clause 4(ii) of each lease, because :

- those provisions require the tenant to contribute a one eighth part of the expenses referred to in the fourth schedule
 - the fourth schedule details expenses relating to the “the Building” and “the said property”
 - “the property” and “the Building” are both defined in clause (1) of the preamble to each lease as “15-19 Lansdowne Road.....which comprises inter alia eight self contained flats”
 - that definition of “the property” and “the Building” has been frustrated by the transfer of the ownership of 15 and 17 Lansdowne Road and the building of four new flats above 19 Lansdowne Road
 - the subject of the service charge provisions in clause 4(ii) of each lease therefore no longer exists, as such, in the form envisaged by each leases
- e. it follows that no service charges are payable by the Applicants at all unless and until a deed of variation is entered into, or the leases are varied by the Tribunal following an application under the 1987 Act

Notices under section 146 of the Law of Property Act 1925

210. Mr Dickson said that the wording of the notices did not comply with the requirements of section 146; the demands had not been accompanied by a statement of tenant’s rights; and the Respondent had issued the notices without first obtaining, pursuant to sections 167 to 169 of the 2002 Act, a determination from the Tribunal or a court that the breach had occurred or an admission by the Applicants that the breach had occurred. The Respondent could therefore not claim the costs of issuing the notices. Also, the section 146 notices referred to ground rent when none had been demanded, and budgeted service charges which the leases did not permit
211. Mr Mehson said that the Respondent’s solicitors had dealt with the issue of the section 146 notices and must have been satisfied with their content and form, and clause 3(d) of the leases permitted the Respondent to recover the costs of the section 146 notices
212. *The Tribunal’s decision*
213. The Tribunal finds that :
- a. the costs charged in respect of the section 146 notices are, in principle, administration charges for the purposes of schedule 11 of the 2002 Act
 - b. however, the section 146 notices refer to demands for payment of ground rent (which are not matters to which section 146 applies (section 146(11)) and service charges, which, for reasons already given, are not payable
 - c. it follows that the costs demanded in relation to the section 146

notices are not themselves payable

The Applicant/Leaseholder's application under section 20C of the 1985 Act

214. Mr Mehson said that the Respondent/Landlord would be seeking to include charges for these proceedings in a future service charge. In answer to a question from the Tribunal, Mr Mehson said that Salmore Property Limited had incurred costs in relation to this application and could recover them through the service charge under paragraph 4 of the fourth schedule to the leases

215. *The Tribunal's decision*

216. The Tribunal finds that there is no evidence before the Tribunal to support Mr Mehson's assertion that Salmore Property Limited has incurred costs in relation to this application. However, in any event, having considered all the circumstances of the case, the Tribunal orders that any costs incurred, or to be incurred, in connection with these 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 Applicants

Fees

217. Mr Dickson applied for an order for reimbursement of fees paid, namely £125 application fee and £195 hearing fee, and also wasted costs. The Applicants had indicated that they were happy for the matter to be determined on the papers, but the Respondent had asked for an oral hearing. If the Respondent had not threatened court proceedings, the Applicants would have sought to reach agreement on outstanding matters, but had had no choice but to make this application to the Tribunal. The Tribunal had already made decisions in relation to Flat 6 in July 2013, and there was no material difference so far as Flat 5 was concerned, so this application should not have been necessary. The managing agents had not acted fairly and had not agreed proper apportionments. They had acted frivolously. Mr Dickson said that he had spent 16 hours on his first statement, 12 hours responding to the Respondent's statement, and 4 hours preparing the bundles. That made a total of 42 hours. His charging rate was £12 an hour. He had also incurred £42 in printing, postage, and search fee

218. Mr Mehson said that the Tribunal had found in its July 2013 decision that it had not been able to make decisions about apportionment, and that a deed of variation was needed. It had been the Applicants' choice to start these proceedings

219. *The Tribunal's decision*

220. The Tribunal finds that :

- a. in relation to Mr Dickson's application for wasted costs, this is not an appropriate case to make an order for wasted costs under regulation 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), and the relevant statutory provision, namely section 29(4) of the Tribunals, Courts and Enforcement Act 2007, because, even if Mr Mehson, as a director of the Respondent company, were a "representative" against whom an order could be made for the purposes of sections 29(4) and 29(6), the Tribunal is not satisfied, in all the circumstances of this case, that there has been any "improper, unreasonable or negligent act or omission" on his part in the proceedings before the Tribunal for the purposes of section 29(5)
- b. in relation to Mr Dickson's application for costs on the basis that the managing agents had acted unfairly and frivolously, this is not an appropriate case to make an order under regulation 13(1)(b) of the Rules, because the Tribunal, having taken account of all Mr Dickson's submissions, is not satisfied, in all the circumstances, that the Respondent has acted unreasonably in defending or conducting the proceedings before the Tribunal; the fact that the Applicants have, as the Tribunal finds, succeeded on a large number of the issues before the Tribunal does not of itself mean that the Respondent has acted unreasonably in defending or conducting the proceedings
- c. however, in relation to Mr Dickson's application for reimbursement of fees for the application and the hearing, the Tribunal finds that it is appropriate to make an order under regulation 13(2) of the 2013 Rules, because :
 - in relation to the application fee, the Applicants have, as the Tribunal finds, succeeded on a sufficiently large number of the issues before the Tribunal to make it appropriate, in all the circumstances of this case, to make an order for reimbursement of the fee
 - the Tribunal accepts that the amount of the fee was £125
 - in relation to the hearing fee, the Tribunal accepts that the Applicants were happy for the Tribunal to determine this case on the papers and that it was the Respondent who requested a hearing, and as the Applicants have, as the Tribunal had found, succeeded on a sufficiently large number of the issues before the Tribunal to make it appropriate, in all the circumstances of this case, the Tribunal has decided to make an order for reimbursement of the fee
 - the Tribunal accepts that the amount of the fee was £195
 - the Tribunal accordingly makes an order that the Respondent should reimburse to the Applicants the application fee of £125 and the hearing fee of £195

Appeals

221. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
222. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
223. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
224. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 5 April 2015

.....
Judge P R Boardman
(Chairman)