

**LEASEHOLD VALUATION TRIBUNAL**  
**FOR THE LONDON RENT ASSESSMENT PANEL**

LON/00AH/LSC/2009/0596

**Landlord & Tenant Act 1985 (as amended) S.27A**  
**Landlord & Tenant Act 1985 (as amended) s.20C**

**Property:** Flats 4 & 5 Bradley Court, 104 Denning Avenue, Croydon,  
 Surrey, CR0 4DF

**Applicants:** Ms M. Pereira (Flat 4) and Mr L. Baker (Flat 5)  
 (Leaseholders)

**Represented by:** In person

**Respondent:** Sarum Properties Limited (Freeholder)

**Represented by:** Mrs F. Barnett; Head of Property Management; Remus  
 Management Limited; Managing Agents  
 Mr P. Church, Accountant, Sarum Properties Limited

**Hearing:** 28<sup>th</sup> and 29<sup>th</sup> January 2010

**Members of the Tribunal:**

Mr L. W. G. Robson LLB(Hons) (Chairman)

Mr P. M. J. Casey MRICS

Mrs S. Justice BSc

**Preliminary**

1. The Applicant leaseholders applied on 14<sup>th</sup> September 2009 for a determination under Section 27A of the Landlord & Tenant Act 1985 (as amended) of reasonableness and liability to pay service charges under leases granted in 1986 (of which only an undated copy relating to Flat 5 was produced) (the Lease) relating to the Service Charge Years ending on 23rd June 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009. The Applicant also applied for the limitation of the landlord's costs of this application under Section 20C of the Act. For ease of reference, extracts of the relevant legislation are set out below as Appendix 1.
2. Pre-Trial Directions were given on 20<sup>th</sup> October 2009, identifying the following matters in dispute:  
**2001/2**  
 Major works contract, cyclical works 2004
  1. \*Cost of refixing soffits adjacent to Flat 5 (£520)
  2. \*Fees of Remus relating to major works (£187.50)

2002/3

Major Works contract 2004

3. \*Managing Agents Fees (£1,758.46)

2003/4

Major Works contract 2004

4. \*Managing Agents Fees (£676.21)
5. Cost of Major Works £(6,000)
6. Contingency (£1,500)
7. \*Insurance excess (£250)

2004/5

Major Works contract 2004

8. \*Managing Agents Fees (£432.75)
9. \*Trust Tax Return Fee (£50)

2005/6

Major Works Contract

10. \*Managing Agent's Fees on 2004 Major Works (£1,598)
11. Managing Agents Fees (Insurance Repairs) (£911.44)
12. Risk Assessment Survey (£114.56)
13. \*Insurance Claim excesses (£250x3)(agreed at hearing to relate in fact to items 25 and 26 below)
14. Building Insurance Premium (£2,017.92)
15. \*Collection costs charged to L. Baker (£62)

2006/7

Major Works contract 2004

16. Completion of Major Works 2004 (£1,621)
17. Insurance claim Flat 8 30.10.06 (£458)
18. Ditto 27.2.07 Water leak, Homeserve (£124)
19. Ditto 16.3.07 Water leak decoration (£176.25)
20. Managing Agent's time costs and surveyor's fee (£2,297.84) (2008 contract)
21. Homeserve Contract (£104)
22. Building Insurance Premium (£2,355.68)
23. \*Rubbish bin hire (£169.20)

2007/8

24. Managing Agent's Fees/ Time costs (£1,236) (2008 Contract)
25. \*Insurance excess Flat 6 (£250)
26. \*Insurance excess Flat 8 (at hearing 2 claims identified)(£500)
27. Homeserve contract (£92)
28. Guardian Parking control contract (£118)
29. Risk Assessment (£235)

- 30. \*Asbestos Survey (£117)
- 31. \*Rubbish bin hire (£186.83)
- 32. Buildings Insurance Premium (£2,985.77)
- 33. Tree pruning (£587.50)

2008/9 (Estimate)

- 34. \*Risk Assessment (£180 budgeted but withdrawn)
- 35. \*Buildings Insurance Premium (£3,225)
- 36. \*Homeserve Contract (£92)
- 37. \*Cleaning (£1,000)
- 38. \*Gardening (£920)
- 39. \*Asbestos Survey (£120 budgeted but withdrawn)

- 3. At the Pre-Trial Review, the parties agreed that the 2008/9 Estimate should not be decided in this application as the Final account was due soon.
- 4. During the hearing, the parties reached agreement on the following items, and upon which the Tribunal has not decided;
  - a) Agents' fees on Major Works Contract 2004 between 2002 and 2006—Agreed total £2,427 inclusive of VAT (i.e. 20%); Items 2, 3, 4, 8, and 10
  - b) Insurance excess charges – amounts as noted above; Items 7, 25 and 26, (and thus 13)
  - c) Soffits, amount as noted above; Item 1
  - d) Fee for Tax Return; amount as noted above; Item 9
  - e) Risk Assessment 2005/6; amount as noted above, Item 12
  - f) Asbestos Surveys; Items 30 and 39 withdrawn by Landlord, replaced by agreed fee for one survey of £117.50 (including VAT).
  - g) In their Reply dated 11<sup>th</sup> December 2009, the Applicants agreed Bin Hire, amount as noted above; Items 23 and 31
  - h) After explanation at the hearing, Mr Baker agreed the administrative charge, amount as demanded, Item 15.

**Inspection**

- 5. The Tribunal inspected the property on the morning of the hearing in the company of the Respondents, and Mrs Barnett on behalf of the Applicant. The subject property was a three storey block of 15 one and two bedroomed flats, without lifts, built conventionally in about 1985 of brick, with a tiled roof standing in modest grounds with a car parking area to the rear. Individual flats were reached from entryphone controlled access doors via common stairs and landings. The grounds were in fair condition, laid mainly to lawn. The boundary fences were old and becoming dilapidated, with signs of “ad hoc” repairs in places. The car park was uneven and without any access control. The boundary fence adjoining the car park was overgrown with vegetation. A number of mature trees grew along the boundaries, which showed signs of quite recent pruning. The internal common parts were quite plain. The ageing rubber flooring tiles were in fair to poor condition. The metal stair rails had not been painted recently, but were in quite good condition. The walls were in reasonable condition, as were the internal doors, although these had been painted while shut, leaving a clear mark around the edges. We noted a number

of external windows in the block where the putty was flaking and old, and the paint was beginning to peel. The rainwater goods were in fair condition, but a number of localised defects were noted as needing attention. A TV aerial was hanging loose and dangling near a window at 2<sup>nd</sup> floor level. There was little that the Tribunal could see of the major works done in 2004, as these had been covered or overtaken by work done later. We noted that some mastic applied to cracks in the brickwork appeared to have had a layer applied on top. We could see no soffit boards loose.

### **Hearing**

6. The items agreed (or agreed not to be decided in this application) have been starred in the list above, leaving the unstarred items for decision by the Tribunal. The Tribunal dealt with these matters under the following headings; Standard and Cost of 2004 Major Works, Supervision Fees for 2008 Major Works, Insurance Claims related Works charged to Service Charge, Agents' Fee for dealing with an Insurance Claim, Building Insurance Premiums, Homeserve Charges, Risk Assessment Fees, Tree Pruning, Parking Control Contract

### Standard and Cost of 2004 Major Works (Items 5, 6, and 16)

7. Mr Baker for the Applicants submitted that a dangling soffit (since 2002) near his window at the front of the building which should have been fixed in 2002 or during the 2004 Works had only been fixed last week. The boundary fences had not been attended to at all and were in poor condition. Paint had been spilt on the lino in the internal common parts and not removed. Old mastic used to fill cracks in the brickwork had not been raked out and replaced (as stated in the specification), but had been left in situ with a new layer of mastic over the top, which stood proud of the wall, instead of flush with it. The varnish applied to the exterior window frames became thinner on higher levels. Defective putty in the windows had not been replaced. Blocked air vents had not been attended to until Grants (the substitute contractor) did them. There were loose cables around the building, although Mr Baker acknowledged they had not been charged for. There were brick fractures that had not been attended to. There had been a problem with the specification which wrongly referred to "pipes" instead of "banisters" in the common parts. The banisters had not been painted, and the supervising surveyor had advised that an extra charge would be made. He agreed that it appeared that the sum included for pipes (£65) had not been charged. In answer to questions from the Tribunal he agreed that it was difficult to ignore the Certificate for Payment issued by Metcalfe Stanley Hicks, the chartered building surveyors employed to value the works (p.207 of the landlord's bundle). He also agreed that the certificate and the additional works done by Grants came to less than the original estimate. Mr Baker submitted that it was an incomplete job, and asked the Tribunal to decide the correct amount.
8. The Respondents submitted that there had been problems with getting the original contractors, Gallaghers, to complete the work and there had been a dispute over payment. Under the terms of the contract, they had obtained a valuation from Metcalfe Stanley Hicks of the work done, and were legally obliged to pay the sum found due. The outstanding works had been finished by

Grants. Gallaghers had not claimed the 5% retention of £540 (plus VAT) certified by Metcalfe Stanley Hicks, although it had become due some years ago. The Respondent would hold the money for 5 years (from 2004) and then return the money to the service charge account. This would happen quite soon. As to the soffit board, the Respondent understood from its contractors that the board had not been hanging down during a previous inspection. The tenant of Flat 2 had signed off the original work in 2002. The board was now fixed.

9. The Tribunal decided that it was difficult even from its inspection to assess the quality and extent of the work done as part of the 2004 contract as nearly six years had passed and a further cyclical maintenance contract had been completed relating to the same areas. Metcalfe Stanley Hicks was an expert firm and their certificate and valuation of the works was dated 22<sup>nd</sup> October 2004. They had clearly valued the works done by Gallaghers shortly after they had been completed. Their certificate was very strong evidence. The Tribunal decided that notwithstanding the Applicants' evidence they had received substantially the work estimated for, (albeit with some minor problems) and apparently at a slightly lesser cost. There had been a discussion at the hearing as to the actual costs, which were not easy to discover from the service charge accounts. The final cost appeared to be £8,460 (Gallaghers) (taking into account the uncollected retention) and £1,360 (Grants) totalling £9,820 plus VAT, as against the tendered contract sum of £10,330 plus VAT. Even if the retention could be claimed at this late stage, the additional cost above the tender price would be minimal. The Tribunal thus decided that the work was of a reasonable standard, and the cost charged was reasonable.

#### Supervision Fees for 2008 Major Contract (Items 20, and 24)

10. The Applicant submitted that the fees being charged were too high and wanted the Tribunal to decide the matter. He did not agree with the Respondent that since the parties had agreed a figure equating to 20% for supervision of the 2004 contract that the work done under this contract should be charged for at a similar rate.
11. Mr Church for the Respondent referred to the agreement relating to the fees agreed for the 2004 works. He also referred the Tribunal to a number of cases decided by other Tribunals which in his view suggested that the appropriate range for these fees was between 10 and 18%. He suggested that a cap of 19% was appropriate in this case. The contract with the agents allowed for a time cost to be charged for this work. They had billed £3,500 already. He agreed that the likely charge would be £4,000 for a contract totalling £18,000. He also agreed that it was difficult to cost a small job satisfactorily.
12. The Tribunal considered the evidence. The contract had been completed without the major problems as had occurred in the 2004 contract. The 2008 contract was a simple cyclical maintenance contract with no complications. The specification and tender process should have followed much of the work done previously. There had been no significant supervision problems. The Tribunal decided, using its knowledge and experience that a reasonable fee for supervision of this contract should not exceed £3,000 plus VAT.

Insurance Claims related Works charged to Service Charge (Items 17, 18 and 19)

13. The Applicants submitted that they understood that they should only pay one insurance excess, but during the hearing they accepted that there had been three claims during the year. However they did not understand why they should pay further amounts towards the cost of water leaks. Ms Pereira submitted that she had had to pay for her own electrical repairs relating to a leak from Flat 6 to Flat 4. The Applicants wanted to know why Flat 10 had not been obliged to pay for these amounts, as there had been so many claims there jeopardising their ability to obtain buildings insurance.
14. The Respondent submitted that Items 18 and 19 related to other items which were below the £250 insurance excess (for repairs to Flat 8 in both cases). Item 17 also related to Flat 8. P.93 of the landlord's bundle showed the invoice for £458.25. The Tribunal noted that there was a corresponding amount in the accounts (P.88 of the bundle) showing £205.25 which accounted for the £250 excess.
15. The Tribunal decided that these sums were reasonable, the parties having also agreed the excesses by the start of the second day. The building insurance was to protect all leaseholders in the block, and it was reasonable to charge amounts less than the excess to the general service charge in the absence of clear evidence of negligence by any particular leaseholder.

Agent's Fee for dealing with an Insurance Claim (Item 11)

16. The Applicants submitted that this charge should have been claimed from the insurers, or not charged at all as there was a commission charge on the premium for claims handling.
17. The Respondent submitted that this amount related to a very large insurance claim in 2006 totalling over £34,000. The managing agent's insurance clerk was involved in liaising with the loss adjuster and the residents. The managing agent's agreement allowed them to charge for this type of extra work on a time basis. The time costing was in the bundle. The Respondent was unsure if the agent had attempted to recover the cost from the insurer, but submitted that it was standard practice to do so. Sometimes it worked, but often the insurers would only accept professional, rather than administrative fees. Mr Church noted that the time sheets in the bundle showed time after 26<sup>th</sup> May 2007, which he confirmed was not chargeable. This would have the effect of reducing the charge by £101.50 (plus VAT thereon)
18. The Tribunal decided that the work done was beyond the normal remit of the managing agent. There was evidence of the time costing (as amended by the Respondent at the hearing) and an agreement to charge the work. It was carried out in the interests of the leaseholders collectively, and in all the circumstances the sum of £674.19 plus VAT of 117.98, totalling £792.17 was reasonable for Item 11.

Building Insurance Premiums (Items 14, 22, 32, and 35)

19. The Applicants submitted that the insurance charges for the years 2006 – 2009 were excessive based on quotes they had obtained. These were at least 40%

cheaper. They had been disadvantaged by the Respondent's failure to provide the full details of the insurance as requested by Ms Pereira. The Respondents had been unco-operative. Nevertheless the Applicants considered that they had obtained satisfactory comparable quotes.

20. The Respondent made a long written submission on the insurance situation, the main relevant points are summarised below. It submitted that the insurance market was very fluid, with rates varying wildly from year to year, and even month to month. The Respondent was not obliged to find the lowest quote, but to act reasonably. The Respondent had carried out a very large survey in 2009, and found that the differences in premium quotations on identical terms was extraordinary. It gave the example of one of their properties, a purpose built block of 22 flats at Warwick Park Court. Five well known insurers had quoted. The premium quotes were £1,476, £1,487, £1,969, 2,056 and £2,297. Their research suggested that there was no consistency in lower rate quotations in other years. If a landlord had asked the two highest quoting companies for a quote, and taken the lowest, in its view, the landlord would not have acted unreasonably. Also a landlord would take a different view to insuring to a leaseholder. A landlord would look for comprehensive insurance with as few exclusions as possible. A lessee would look for the cheapest possible rate and accept exclusions no landlord would accept, such as prohibition on subletting, and confirmation that tenants have no criminal convictions or are not subject to bankruptcy proceedings. The Respondent's experience was that insurers were keen to accept properties with good claims records and get rid of properties with bad ones.
21. Bradley Court had one of the worst claims records in the Respondent's portfolio. There had been 8 claims between 1999 and 2007. Over 8 years insurers had received £18,000 in premiums, but had paid out £50,537. The claims record was not improving. Two further claims in 2009 totalled £9,597. Last year the five major insurers they usually used refused to quote on Bradley Court. Cover was finally obtained from AVIVA at a considerably higher premium. The Respondent had a block policy, surveyed the market regularly, and changed its insurer from time to time. It also had looked at other LVT decisions which suggested that its costs per unit were comparable. The rates included a 15% commission to the Respondent, which other decisions had suggested was reasonable.
22. The Respondent submitted that in relation to the Applicant's two quotations, the NIG quotation (including terrorism) was undated, no proposal form had been supplied, and there was no evidence that the insurer knew of the claims history. The Norwich Union quote was for £2,482.25 including terrorism. The proposal form was not supplied, but there was evidence that the insurer was aware of the claims history. However the Applicant had obtained the quote six months later, the claims history to be taken into account was different, and there were a number of other items where the insured sum or conditions was different, e.g. public liability £5 million (landlord) and £2 million (lessee), and occupancy conditions. The Applicant's quote was 14% cheaper. The Respondent submitted that all the premiums charged were reasonable.

23. The Tribunal noted that technically item 35 was not to be decided by it, although its decision on earlier years may influence the parties' views of reasonableness on that matter. The Tribunal also noted that the Norwich Union quote obtained by the Applicants in 2009 required the addition of terrorist cover to make it comparable (i.e. £1,894.25, add £588). The difference was thus much less than the 40% suggested by the Applicants. The Tribunal was aware of the difficulties faced by the Applicants in obtaining comparable quotes, but the evidence provided to the Tribunal showed that the Respondent had a satisfactory system in place to check the market, and appeared to be providing value for money. It is settled law that the landlord is not obliged to accept the lowest quote, but to act reasonably. There was no evidence to show that the landlord had not done so, or charged an excessive amount. The Tribunal also applied its own knowledge and experience of such matters and decided that items 14, 22 and 32 as charged were reasonable.

#### Homeserve Charges (Items 21, and 27)

24. The Applicants considered that the Home serve contract gave no benefit to the lessees. On a previous occasion Homeserve had called out a plumber for a lessee, but during the late May Bank Holiday in 2009, Ms Pereira had had an emergency and phoned the Homeserve number. Homeserve had refused to help or call the managing agents. A similar situation had occurred at Flat 2. No details of the contract with Homeserve had been produced. Apparently it was for the communal areas only. Ms Pereira had tried without success to get details of the contract.
25. Mrs Barnett for the Respondent submitted that Homeserve offered an out of hours service. Homeserve would contact a duty manager of the agents, she was one of them, but she did not know who had been on duty that day. In reply to questions she agreed that the agents had a duty to supply an out of hours service but denied that the service was merely a convenience for the Respondent, rather than the lessees. If they did not use Homeserve, the agents would have to increase their management fees.
26. The Tribunal noted that the managing agent had a duty to provide an out of hours service under its contract, and as required by the RICS Service Charge Residential Management Code, 2<sup>nd</sup> Ed. Item 3.12. The Tribunal decided that the Homeserve contract gave no benefit to the Applicants, and thus that both items 21 and 27 were unreasonable.

#### Risk Assessment Fees (Items 12, and 29)

27. The Applicants submitted that they did not know what these fees covered. They did not know what work had been done. They questioned the necessity for them.
28. Mr Church submitted that there were three types of survey required on the property. Asbestos, General Risk Assessment, and Fire Risk Assessment. It was at this point after discussion the parties agreed that only one Asbestos survey had been necessary, and agreed that the charges relating to that item



should be reduced (see matters agreed above). As to the others, Mr Church submitted that a general risk assessment was required periodically, and also a more detailed fire risk assessment every 18 months. He referred to the reports and invoices for these inspections in the landlord's bundle.

29. The Tribunal noted that the Respondent had a legal obligation to have these assessments carried out. There was evidence of the work being done, and the fees incurred. The Tribunal applied its own knowledge and experience, and decided that the fees were reasonable, and of a reasonable amount.

#### Tree Pruning (Item 33)

30. The Applicants submitted that two of the trees had been pruned twice. The first pruning in January 2008 had left branches too close to the building, and overhanging the road, leading to a notice from the London Borough of Croydon. The trees had then to be pruned severely. The Applicants submitted that the first pruning had been insufficient, and that the cost was therefore unreasonable. It was a poor job, and with poor supervision.
31. The Respondent submitted that the pruning had been done on different trees on each occasion. Managing agents were constantly asked to keep costs down. The quote from the tree surgeon who had reported on their condition had been £2,350. The managing agents had sent the leaseholders a letter dated 10<sup>th</sup> January 2008 suggesting a cheaper scheme. No reply had been received from any leaseholder so the agents implemented the cheaper scheme. The bill from the successful contractor was for £587.50. In reply to questions, Mr Church confirmed that only the first pruning had been charged. The second pruning had not yet been charged.
32. The Tribunal noted that there was a conflict of evidence between the parties as to whether two trees had been done twice but there was evidence of a considerable amount of work done on the trees. The Tribunal considered that the letter seeking views from the Applicants of 10<sup>th</sup> January 2008 was a genuine attempt to keep costs down. The cost of the second pruning was not before the Tribunal. The Tribunal decided that the charge made was reasonable, in the light of the work seen on inspection, but it was clearly open to the Applicants to challenge the second charge if they considered it was too high when that charge was demanded.

#### Parking Control Contract (Item 28)

33. The Applicants submitted that the parking control contract had only been in place for one year, ending in 2008. Thereafter it had been ended, but the company continued to impose charges on vehicles illegally. Ms Pereira had had to pay to get a relative's car released in August 2009. She had asked for a copy of the contract without success. There were still signs up in the parking area.
34. The Respondent submitted that it had no letters relating to the set-up of the contract. It had been placed to deal with illegal parking problems. Nevertheless the £117.50 was a one off charge to pay for the signs. After that the cost of clamping paid for the service. The contract had been terminated

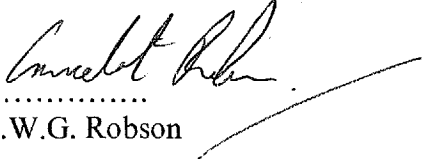
after one year. The managing agents had no hold over the company concerned, and suggested a letter be written by Ms Pereira demanding repayment.

35. The Tribunal had noted the signs on inspection. The explanation offered by the Respondent seemed reasonable. The Tribunal thus decided to allow the charge demanded, but it seemed to the Tribunal that the Respondent should also write to the company concerned to support Ms Pereira's complaint.

### **Section 20C Application**

36. The Applicants had applied for an Order limiting their contribution to the landlord's costs of this application. The Respondent directed our attention to the terms of the Lease, specifically to the Third schedule, which allowed it to charge.
37. The Applicants submitted that they had been disputing these items since 2007. The agents should have sought legal advice and dealt with these matters earlier.
38. The Respondent submitted that it had not acted oppressively. Although the Applicants were not happy with some aspects of their approach, the Respondent had tried to deal with their queries. The Applicants owed large amounts of service charges.
39. Ms Pereira disputed that she owed large amounts of service charge.
40. The Tribunal decided to limit the Respondent Landlord's costs of the Application to be charged to the property service charge to £1,500 in total as it appeared that both parties had prevaricated in bringing issues to a head. The papers showed that problems had been ongoing since as early as 2002. The Respondent had not been very responsive prior to issue of the application, although since that time had appeared to deal with matters properly. The Applicants had issued the Application, had been successful on a limited number of issues, but only conceded others at the hearing, when conceding earlier would have been appropriate.

Signed: .....

  
L.W.G. Robson

Chairman

Date: .....

16th March 2010

## APPENDIX 1

### **Section 27A(1) Landlord & Tenant Act 1985**

*"An application may be made to a leasehold valuation tribunal for a determination 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"*

### **Section 20C Landlord & Tenant Act 1985**

*"(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, residential property tribunal, 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."*

*(2).....*

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

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