5228

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property:	Beverley Court, 72 Christchurch Street, Ipswich, Suffolk IP4 2DH		
Applicant(s):	19.11.09	Flat 4	Mr Jeremy A Bevan
	09.01.10	Flat 6	Dr Rajiv Chhabra
	12.01.10	Flat 8	Ms Olga Reilly
	19.01.10	Flat 11	Mr John Symons
	10.02.10	Flat 1	Mr C Grunbaum
Mr Bevan represented by:	Mr C Storey MRICS		
Respondent(s):	HND Investments Limited (landlord)		
Represented by:	Mr Paul Spelzini MRICS (PQS Associates)		
Tenants:	25.01.10	Flat 2	Mrs Margaret Barritt
	09.02.10	Flat 7	Ms Tracy Beaney
	18.02.10	Flat 9	Ms Amanda L Adamberry
Managing agents:	Samnat Investments Ltd (director Mrs Helen Kemp)		
Other notified tenants:		Flat 3	Mortgage Express (in possession)
		Flat 5	Mr T J Fraser
		Flat 10	Ms Wendy Clayton
		Flat 12	Mr Philip Millson
Case number:	CAM/42UD/LSC/2009/0139		
Date of Application:	19 November 2009		
Initial meeting:	18 March 2010 (to be dealt with on written representations)		
Hearing:	21 June 2010		
Decision meeting:	19 July 2010 (in private)		
Type of Application:	Dispute over service and administration charges Landlord & Tenant Act 1985 section 27A and section 20C Commonhold & Leasehold Reform Act 2002 section 158 and Schedule 11 paragraph 5		
Tribunal:	Mr Geraint M Jones (Chairman) Mr D S Reeve		

[Mr E A Pennington FRICS was appointed to sit in the expectation that the case would be concluded before his retirement date, which was shortly before 18 July 2010. He participated in the hearing but not in the deliberations or Decision.]

ORDER

Upon hearing the parties and their surveyors and reading written representations

IT IS ORDERED THAT: -

1. The following persons being under-lessees of the flats shown below shall be added as Applicants for the purposes of this Application: -

Flat 2	Mrs Margaret Barritt
Flat 7	Ms Tracy Beaney
Flat 9	Ms Amanda L Adamberry

2. The actual service charges payable by the Applicants in respect of Beverley Court, 72 Christchurch Street, Ipswich IP10 2DH for year ending 25 March 2010 shall be based on the totals set out in the second numerical column of the Schedule hereto under the heading "actual service charge year ending 25 March 2010".

3. The advance service charge payments payable by the Applicants in respect of Beverley Court for year ending 25 March 2011 shall be based on the totals set out in the fourth numerical column of the Schedule hereto under the heading "service charge budget year ending 25 March 2011".

4. The parties have permission to apply to the Tribunal within three months after service of this Order upon them in the event they are unable to agree in relation to the individual flat of any Applicant: -

   (a) The re-stated service charge accounts for year ending 25 March 2010 (actual) and year ending 25 March 2011 (advance payments); or
   (b) The amount of any refund offered by the landlord or requested by the tenant.

5. The Tribunal considering it just and equitable so to order, the Respondent's costs of and occasioned by this Application (including costs incurred by the Respondent's managing agent Samnat Investments Ltd) shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of Beverley Court.

6. The Tribunal Office shall serve copies of this Order upon all tenants of Beverley Court who responded to the Tribunal whether or not they are named as parties to the Application.

Geraint M Jones MA LLM (Cantab)
Chairman
26 July 2010

SCHEDULE

BEVERLEY COURT, IPSWICH
Case ref: CAM/42UD/LSC/2009/0139

	Claimed £	Allowed £	Claimed £	Allowed £
Service charge budget	**y/e 25 March 2010**		**y/e 25 March 2011**	
Insurance	2,750.00	1,750.00	1,800.00	1,800.00
Repairs	4,450.00	4,450.00	7,115.00	3,115.00
Electricity	1,100.00	1,100.00	250.00	250.00
Water rates	1,000.00	0.00	0.00	0.00
Gardener/caretaker	1,600.00	1,600.00	3,000.00	3,000.00
Public liability cleaner/gardener	160.00	160.00	90.00	0.00
General supplies	200.00	200.00	150.00	150.00
Surveyors fees)_	4,500.00	1,500.00	4,500.00	0.00
Legal fees)				
Bank charges/debt collection	500.00	500.00	300.00	300.00
Miscellaneous expenses	320.00	0.00	320.00	0.00
Accountancy	750.00	750.00	750.00	750.00
Section 146 notice costs	10,000.00	0.00	0.00	
Subtotal	27,330.00	12,010.00	18,275.00	9,365.00
Management fee 15%	4,099.50	1,801.50	2,741.25	1,404.75
Ground rent collection fee 17.5%	116.37	116.37	116.37	115.00
Total	**31,545.87**	**13,927.87**	**21,132.62**	**10,884.75**

Actual service charge year ending 25 March 2009

Insurance	1,676.48	1,676.48
Repairs	5,495.27	5,115.27
Electricity	392.19	392.19
Water rates	0.00	0.00
Gardener/caretaker	2,998.32	2,917.70
Surveyors fees	1,760.75	1,228.75
Legal fees	1,894.65	0.00
Bank charges	102.40	92.40
Miscellaneous expenses	320.00	0.00
Accountancy	587.50	587.50
Ground rent collection fee	116.37	
Subtotal	15,343.93	12,010.29
Management fee 15%	2,301.59	1,801.54
Ground rent collection fee 17.5%		116.37
Total	**17,645.52**	**13,928.20**

Note: Strictly, the ground rent collection fee is not part of the service charge; but it is an administrative charge over which the Tribunal has jurisdiction.

GMJ 27 July 2010

REASONS

0. BACKGROUND

The Property

0.1 The property is a block of 12 flats dating from 1975 built on a sloping site not far from the town centre, with small areas of communal gardens front and rear and visitor parking and garages or dedicated car parking spaces for all leaseholders. The building is of brick construction on four floors with a mansard roof and aluminium-framed single-glazed windows. It is set into the ground at the front. There is a communal semi-basement area at the front which is used for storage. The flats are fairly small, with one or two bedrooms, and vary considerably in size and shape. Flats 1 and 2 are on the bottom (semi-basement) floor at the rear (where they are at ground level); Flats 3, 4, 5 and 6 are on the ground floor (i.e. at ground level on the front elevation); Flats 7, 8 and 9 are on the first floor and Flats 10, 11 and 12 on the second floor. There is no lift.

0.2 On inspection, the Tribunal found the property to be generally in fair condition, with evidence of recent pointing on the front elevation. The entrance hall and communal stairways and landings are in fair decorative condition but are fairly utilitarian in design and equipment. There is, however, some old staining on the left-hand flank external wall (looking from the front). It appears that this was associated with a plumbing leak from one of the flats that caused some damage but has been dealt with. A document in the hearing bundle shows that the roof was renewed in 2006 at a cost of £742.71 per flat. Much of the boundary fencing appeared to have been renewed fairly recently. The grounds (which appear to require only minimal maintenance) are in reasonable order.

The Head lease and Under-leases

0.3 By a head lease dated 25 September 1975 the site was let by Gosang Properties Ltd to HGS Builders (Ipswich) Ltd on the basis that HGS would build a block of 12 flats and let the same on long leases. Mr Harry Gold, solicitor, formerly of the West End firm Bennetts but since 1988 practising in Guernsey, was, we were told (though he said he could not recall it), a director and majority shareholder of both companies. The lease was for a term of 99¼ years from 25 March 1975 at a ground rent of £375 per annum, increasing to £750 after 33 years and to £1,025 after 66 years. The head lessee covenanted (in summary) to repair, maintain, decorate and insure the building.

0.4 We were told that the under-leases (drafted by Mr Gold) were all in the same terms. The sample under-lease is fairly typical of its period. It is dated 4 January 1977 and grants a term of 99 years from 25 March 1975 at a ground rent of £30 per annum for the first 33 years, £55 for the next 33 years and £80 for the remainder of the term. The initial rents were set at £20, £30 or £35 (depending on the size of the flat). The Tribunal was provided with a schedule showing that current ground rents are set at £50 (Flats 5, 6 and 12), £55 (Flats 1 to 4, 7 and 9) and £60 (Flats 8, 10 and 11). Thus the total ground rents were initially £375 per annum but are now £660 per annum, £90 less than under the head lease. The difference may be accounted for by ground rent for an electricity sub-station which is situated in the rear left-hand corner of the site.

0.5 The obligations of the parties are mostly set out in schedules to the under-leases. In summary, by the Sixth Schedule the landlord covenants to insure the building and to repair, maintain and decorate the structure of the building, common parts and grounds.

0.6 By paragraph 11 of the Sixth Schedule the landlord covenants as follows: -

> "If so required by the tenant to enforce the covenants and conditions similar to those contained herein on the part of the tenant entered into or to be entered into by the tenants of the other flats in the building **so far as they affect the Flat** on the tenant indemnifying the lessor against all costs and expenses of such enforcement and giving reasonable security for such costs and expenses."

(The emphasis is ours.)

0.7 By the Fourth Schedule the tenant covenants to contribute "a proportionate part" (according to rateable value) of the landlord's costs listed in the Fifth Schedule. The landlord is entitled to collect "fair and reasonable" payments on account of "anticipated expenditure", including periodic expenditure whenever incurred. This appears to mean that the landlord can, over a period of years, collect reasonable sums towards (for example) the eventual replacement of the roof.

0.8 It is not clear how the service charges are in fact allocated. No complaint is made by the Applicants about allocation. Of course, rateable values no longer exist. If no information about the last recorded rateable values Is available, allocation by reference to the Council Tax valuation list might be a reasonable approach to the obsolete arrangements set out in the leases.

0.9 The expenses listed in the Fifth Schedule are as follows: -

(a) The expense of tending maintaining repairing and renewing amending cleaning and keeping tidy where appropriate all parts of the Building and the Property and the roads accessways paths footpaths passages boundary walls hedges fences and all other parts of the Property not specifically demised.
(b) The costs of employing and providing accommodation in the Building or elsewhere if the Lessor considers it necessary for a porter or porters or watchmen. [No such staff are provided as clearly none are necessary.]
(c) The costs and expenses incurred by the Lessor in carrying out the obligations on the Lessor's part herein contained.
(d) All charges assessments and other outgoings (if any) payable by the Lessor in respect of all common parts of the Building and all parts of the Property not specifically demised (other than income tax).
(e) All expenses of the Lessor in connection with the collection of rents and for general management.
(f) All fees and costs incurred in respect of the annual Certificate [the certificate to be provided to leaseholders of chargeable expenses] and of accounts kept and audit made for the purposes thereof.
(g) The costs of taking all steps deemed desirable or expedient by the Lessor in complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or order or statutory requirements thereunder ...
(h) Any other expenditure which the Lessor shall consider necessary or desirable in the interest of the general management and or maintenance of the Building and the Property.

0.10 The tenant's general covenants are set out in the Third Schedule. These include covenants relating to administrative and professional expenses incurred by the landlord. As is the case in almost all leases, the tenant covenants at paragraph 14 of the Third Schedule to reimburse the landlord in respect of costs incurred in connection with the service of section 146 notices (notices required under the provisions of the Law of Property Act 1925 to be served as a preliminary to any forfeiture of the lease for breach of covenant).

0.11 At paragraph 9 the tenant as underlessee covenants not to assign underlet of part with possession of any part of the Flat and not to assign transfer underlet or part with possession of the whole of the Flat without the previous consent in writing of the head lessee such consent not to be unreasonably withheld provided the tenant imposes on the sub-undertenant or assignee (under paragraph 10) a requirement to covenant directly with the head lessee to perform the covenants in the under-lease. In addition, under paragraph 11 the tenant must register every assignment or sub-underletting with the head lessee's solicitors and pay a reasonable fee for so doing.

0.12 In response to the Directions Order dated 12 April 2010 Mr Spelzini sent the Tribunal copy entries relating to title number SK311522, which relates to a completely different site off Spring Road, Ipswich. It should be noted that no satisfactory response was received in relation to the direction that the landlord should disclose the conveyancing file so far as it related to the section 146 notice and the balance of service charge accounts at the date of transfer. This is, perhaps, not particularly surprising. It is clear that the transaction in relation to the land at Spring Road, which involved another Panamanian company, was not dealt with at arm's length; it seems reasonable to assume that the same applied to Beverley Court. It appears probable that HND and Samnat assumed responsibility for all the problems previously facing Plintal.

0.13 A Land Registry search shows that the freehold is and has since October 1978 been owned by Ryan Elizabeth Holdings Ltd under title number SK20876. The head-lessee under title number SK23534 is HND Investments Limited, who bought the head lease from Plintal SA (a company registered in Panama for which Mr Gold acts) on 12 May 2009 for £24,000. Mr Gold said that Gosang was wound up when the freehold was sold to Plintal and he had no subsequent involvement with HGS. Mrs Kemp is Mr Gold's daughter. She is majority (80%) shareholder in HND Investments Limited. She and her husband are directors and proprietors of Samnat Investments Ltd.

1. THE DISPUTE

1.1 During the period when Plintal SA owned the head lease, the property was managed by Mr Edward Tish, instructed by Mr Gold. There is a suggestion that Mr Tish was not a very good manager. Certainly, he featured in a Tribunal case involving a block he managed for Plintal at Edgwood Drive, Orpington. On that occasion, his conduct was criticised by the Tribunal and his evidence described as "evasive and generally unsatisfactory". Be that as it may, Mr Tish last issued service charge demands for the accounting year ending 25 March 2007. Our papers include a service charge demand dated 12 September 2006 directed to Mr K Taylor (Flat 4).

1.2 At some stage Mr Tish became ill and late in 2006 he died, with the result that no effective management took place for some time. No service charge demands were served on leaseholders for 2007-8 or 2008-9. It is clear from a letter of 15 March 2007 sent by "Elizabeth Holdings Plc" to Mr Taylor that Mr Gold became aware of the death within a few weeks. The letter also refers to Samnat's involvement in informing the freeholder that insurance cover had expired on 12 February 2007. It appears that the freeholder had renewed the insurance and was asking Mr Taylor to contribute 1/12 of the total cost, which was £1,840.15, plus a 15% administration fee.

1.3 In July 2008 Ryan Elizabeth Holdings (a company based in the Ipswich area) served a section 146 notice on Plintal (at Mr Gold's offices in Guernsey) alleging failure to insure and pay ground rents and enclosing a Schedule of Dilapidations. The notice sought payment of in the sum of £4,977.65 comprising insurance premiums paid by the freeholder (because Plintal had failed to insure) of £562.50; £162.50 in unpaid ground rent; a surveyor's fee of £1,525.00 (listed in error as £15.25) and costs of £3,008.00.

1.4 The dilapidations were not particularly serious; but they needed to be dealt with. Initially, there was some correspondence between Gotelee & Goldsmith, the freeholder's solicitors, and Opus Property Consultants Ltd, or Harefield, Middlesex, who had been appointed managing agents. Obviously, the rent and insurance premiums had to be paid to the freeholder. Rents from leaseholders would have to be collected and attempts made to recover from leaseholders proportionate contributions to the insurance costs. This was likely to present a problem because some leaseholders might easily have taken out their own insurance in order to comply with mortgage covenants. As it turns out, it appears that the leaseholders made payments direct to the freeholder in respect of insurance costs for 2007-8 and presumably 2008-9.

1.5 This situation appears to have presented to Mr Gold an opportunity to acquire the head lease for his daughter and to enable her to venture into residential property management. HND Investments Ltd was set up to acquire the head lease. Mrs Kemp and her husband set up Samnat Investments Ltd to manage this and Burnham Court, another block in Ipswich built by HGS in 1976. Mrs Kemp is clearly an intelligent and educated woman; but she and her husband had no professional qualifications in this field and no experience in residential property management. It appears that they had a lot to learn. Arrangements were made to obtain insurance (actually carrying on arrangements made by the freeholder) and to remedy the disrepair complained of. In May or June 2009, Mr Spelzini was engaged by Samnat to deal with the matter and efforts were put in hand to engage contractors to carry out the necessary works. As will be seen, much of the work was carried out at fairly modest expense by a self-employed jobbing builder called Ernie Teague.

1.6 Having acquired the head lease (and thus the right to nominate a managing agent) Mrs Kemp set about preparing a budget and issuing interim service charge demands. By letters dated 10 May 2009 Samnat sent the leaseholders a budget statement listing anticipated expenditure of £31,545.87 and a demand for immediate payment (in Mr Bevan's case of £2,444.80). Item 10 was a one-off charge of £10,000 headed "Section 106 Notice". It appears that this was a misprint for section 146 and was based on the costs set out in the section 146 notice of July 2008 plus Samnat's anticipated costs.

1.7 Mr Bevan did not consider that he was liable to contribute to the section 146 costs. Other anticipated expenses appeared to him to be very much on the high side, as a result of which he refused to pay pending an adequate explanation which, in his view, he never received. Mr Kemp's letter of 15 July 2009 is a fairly common form of response to this type of enquiry. She threatened to refer the matter to solicitors who would contact Mr Bevan's mortgage provider. It seems unlikely that she thought of this approach by herself. Perhaps her father had told her that this form of threat was generally effective as a means of securing payment.

1.8 Meanwhile, it came to Mrs Kemp's attention that Mr Bevan was subletting his flat and had been doing so for some time without the consent of the head lessee. Her immediate reaction appears to have been to instruct solicitors to serve a section 146 notice.

1.9 Kerseys wrote to Mr Bevan on 10 November 2009 and, receiving no reply, served a section 146 notice by letter dated 27 November 2009. The letter of 10 November 2009 imposed four conditions for the grant of licence to sublet. These were as follows: -

(i) A written undertaking must be given by Mr Bevan's solicitors to pay all the head-lessee's solicitor's costs and disbursements and Samnat's expenses and administration fees (no sums being specified) for processing the application whether or not it proceeded to completion.

(ii) A bank, employer and personal reference in respect of any prospective assignee/under tenant must be provided within 14 days.

(iii) Details of the assignee/under tenants including full names and addresses must be provided also within 14 days.

(iv) The arrears of ground rent and service charge together with Kerseys' costs regarding this correspondence must be discharged in full before the licence would be granted.

The letter further stated that any licence to assign/sublet would be dealt with by Masons, Solicitors of Guernsey.

1.10 Mr Bevan had already indicated the grounds of his dispute over the service charge demand. He knew that Plintal had charged £550 in respect of the licence to assign to him, plus the managing agents' fee of £100 and registration fees of £15 for each of the transfer and mortgage. We know from Mr Symons' representations that a fee of £300 was sought from him in respect of a subletting, which he considered excessive. Mr Bevan was not willing to meet the conditions imposed by Kerseys. His response was to refer the dispute to the Tribunal, as he was entitled to do, by his Application dated 19 November 2009. Thus he gave his response within 14 days and before service of the section 146 notice.

1.11 Standard directions were given on 1 December 2009 by Procedural Chairman Mr Graham Sinclair. Sadly, these were not entirely complied with. In particular (and most

significantly) the disclosure given by the Respondent was woefully inadequate.

1.12 When the Tribunal met on 18 March 2010 to decide the case on the basis of written representations (without attendance by the parties) it was impossible to reach any conclusions on many of the issues with any reasonable degree of confidence. In order to avoid injustice to the parties, the Tribunal decided to direct an oral hearing. Accordingly the Chairman issued a further directions order dated 12 April 2010 in an attempt to ensure that all relevant documents would be available at the hearing.

1.13 There were professional representatives on both sides at the hearing of 21 June 2010 and, as will be seen, good progress was made in examining the evidence and airing the issues between the parties. However, it was unsatisfactory that there were still several relevant documents in the hands of the Respondent's managing agents that were not disclosed to the Applicants or produced to the Tribunal. The hearing concluded at about 1730 hrs. It was clear that there was insufficient time to decide the case that day and that the Tribunal would have to reconvene in private to decide the outstanding issues.

1.14 Accordingly, the Tribunal decided to issue a further order for specific disclosure by the landlord and further written representations on issues arising out of such disclosure. Mrs Kemp on behalf of the landlord undertook to disclose the documents listed in the order. The order dated 25 June 2010 was e-mailed to Mr Spelzini at 1500 hrs that day. The order was partially complied with (though not on time), making it possible for the Tribunal to decide the issues before it with a reasonable degree of confidence.

2. THE ISSUES

2.1 The Applicants challenge as unreasonable the service charge budgets and interim service charges for 2009-10 and for 2010-11. They also dispute some of the items of actual expenditure for 2009-10, including the management charges. They take objection to the administration charges imposed for licences to assign and sublet and in connection with section 146 notices. As it turns out, it is now possible for the Tribunal to consider the whole of the actual service charge account for 2009-10.

2.2 The Respondent landlord seeks to support the charges rendered. The Respondent argues that all service charges claimed relate to costs and expenses reasonably incurred and within the terms of the under-leases. If the service charges appear high, that is partly because no service charges were collected for two years or more. As regards the administrative charges, these were all reasonably incurred in accordance with the provisions of the under-leases and lack of co-operation on the part of leaseholders has contributed to the costs claimed.

2.3 It is clear from correspondence received from Tracey Beaney (Flat 7) and Ms Adamberry (Flat 9) that they wish to be treated as Applicants and the Tribunal so directs. As we understand it, Mrs Barritt (who is, we understand, an aged lady) does not wish to make any representations but wanted to become a party in order to get the benefit of any findings the Tribunal might make in favour of the Applicants. It is not our understanding that she supports the landlord. In our view she also should be treated as an Applicant and we so direct. Given that the Tribunal has power to order these

"Respondents" to contribute to the application and hearing fees, we consider that no prejudice will be suffered by any party by reason of these directions.

3. THE EVIDENCE

3.1 Many of the relevant facts were not in dispute. This Decision will set out to the evidence only insofar as is necessary to show how and on what basis disputes of fact were resolved. It was apparent that the Respondent landlord was reluctant to disclose detailed particulars of the actual costs incurred and relevant supporting documentation. The Tribunal has formed the view that, in response to the directions order of 25 June 2010, the Respondent disclosed documents considered likely to be helpful to the Respondent's case and deliberately withheld documents that were considered likely to be detrimental to the Respondent's case.

This may have been partly the result of a misunderstanding of the law. Mrs Kemp wrote to say that she considered it unnecessary to provide supporting evidence because the auditor's certificate is conclusive. It is, however, surprising that her father did not explain to her that the Tribunal has jurisdiction to review the auditors' work, whether or not the lease purports to make it conclusive. The Tribunal is not convinced that this was the real reason for the failure of HND and Samnat to address a number of the issues raised by the Applicants. As will be seen, the Tribunal found that close scrutiny of the service charge budgets and accounts was essential in order to decide the case fairly.

3.2 The actual expenditure for 2009-10 is shown in the audited accounts at a total of £17,645.52, compared with the budget figure of £31,545.87 which some tenants, under pressure from Samnat, actually paid. The principal reason for this discrepancy is that the section 146 charge of £10,000 does not appear in the audited accounts. In addition, the allowance of £1,000 for communal water rates is not reflected in the final accounts for the very good reason that there is no communal water supply. The removal of these items, of course, affects the management fee, which is claimed at 15% of estimated costs (a total of £1,650 on the removed items). We shall return to this matter in our conclusions.

3.3 Mr Spelzini appeared not only as an advocate but also as a witness of fact. He was responsible for engaging the contractors employed to carry out remedial works pursuant to the section 146 notice served by the freeholder and also supervised the work. He told the Tribunal that during the summer of 2009 there was a leak from Flat 3 which continued for some months, the owner having disappeared. There was an outside tap; but it appeared to be connected to the water supply of Flat 3. It was not plumbed in correctly and may have been fitted illegally. It was removed. Water damage was one of the items listed in the Schedule of Dilapidations, though the freeholder's surveyor seems to have thought (wrongly) that it was caused by leaking gutters.

3.4 When he first inspected, the northern accessway (footpath to left-hand side of building) was inaccessible because of junk and rubbish. Teague cleared all that. Teague also dealt with an infestation of Japanese knotweed. Manhole repair costs were passed on to leaseholders. Mr Teague carried out most of the other work except the fencing work. Certain of the works estimated at £555 were invoiced at £805 because he had to carry

out additional work. Mr Teague explained it to Mr Spelzini, whose best recollection at one point was that it related to an increase in the cost of tiling common parts. He also said that power-washing of the stained walls was much more extensive than anticipated.

He had not seen all the invoices (some of which Mrs Kemp had at home). Mr Spelzini considered the management fees reasonable. He pointed out that there was quite a lot of management activity in 2009-10. Because of the three-year service charge holiday, the managing agents had no reserve fund as at May 2009. Thus, he implied, the leaseholders would ultimately benefit from the over-charge for 2009-10.

3.5 Finally, Mr Spelzini told the Tribunal that the section 146 proceedings brought by the freeholder were still on-going (though it seems that the threat of forfeiture has been removed). Because no counter-notice was served at the appropriate time, it was proving difficult to challenge the sums claimed. The freeholder's legal costs were in dispute because they had charged London rates rather than Ipswich rates.

4. THE LAW

Service and Administration Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A of the Act the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind the RICS Residential Management Code (2nd Edition), as approved by the Secretary of State under section 87 of the Leasehold Reform, Housing & Urban Development Act 1993. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 **variable administration charges** are payable by a tenant only to the extent that the amount of the charge is reasonable. An application may be made to the LVT to

determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

Consultation

4.5 Under section 20 of the 1985 Act (as substituted by section 151 of the Commonhold & Leasehold Reform Act 2002 with effect from 31 October 2003) and the Service Charges (Consultation Requirements) (England) Regulations 2003 landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts.

4.6 In cases where the same contractor is employed to carry out items of work on a regular basis, the Tribunal must first consider whether there was a 'long term agreement' within the meaning of the section. There will be many cases in which a single contractor carries out numerous items of work, perhaps over a long period, under a series of individual contracts. Such individual contracts may or may not be awarded under an express or implied umbrella contract specifying rates of remuneration and, perhaps standards of performance. There may or may not be a commitment for the landlord or manager to employ the services of the contractor. In each case, it will be a question of fact whether there is a qualifying long term agreement.

4.7 In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be). However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.8 Accordingly, under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002) the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Notification within 18 months

4.9 Furthermore, under section 20B(1), if any relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment is served on the tenant then, unless subsection (2) applies, the tenant shall not be liable to contribute to those costs. Subsection (2) provides that subsection (1) shall not apply if within that period of 18 months, the tenant

was notified in writing that those costs had been incurred and that he would subsequently be required to contribute to them through the service charge.

Information for tenants

4.10 Under section 21 of the Landlord & Tenant Act 1985 a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded. Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.

4.11 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence.

Service charge funds held by landlords or managing agents

4.12 Under section 42 of the Landlord & Tenant Act 1987, where the tenants of two or more dwellings are liable to contribute towards the same costs by the payment of service charges, any sums paid by contributing tenants must be held on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable and, subject thereto, on trust for the contributing tenants. It follows that the landlord (or his agent) is under a duty to account to the tenants for any interest received on funds so held. The funds are "client funds" and the tenants as well as the landlord are the agent's "clients" for this purpose. However, tenants are not entitled to a refund. On termination of any lease, the leaseholder's share passes to the remaining tenants and upon termination of the last lease, to the landlord.

4.13 The RICS Code advises landlords' agents to open a separate bank account to deal with "client funds", which include service charge monies collected in advance and to inform those whose money it is of the name and address of the bank; the account number and name; and whether or not it is an interest bearing account. Paragraph 5.10 reminds agents that: -

> "Interest earned on client money belongs to the client, not to you. Unless the client agrees otherwise in writing, you must credit interest earned on any client bank accounts to the appropriate client(s)."

4.14 All chartered surveyors and others engaged by way of business in residential property management should be familiar with the provisions of this Code.

4.15 Part 10 of The RICS Code (2nd Edition) deals with "Accounting for Service Charges". Agents are advised that accounts should reflect all expenditure in respect of the relevant accounting period, whether paid or accrued and should indicate clearly all the income in respect of the accounting period, whether received or receivable. Copies of such accounts should be made available to all those contributing to them.

4.16 Service charge funds for each property should be identifiable and either placed in a separate bank account or in a single client/trust account. Where interest is received this belongs to the fund collectively; it should be shown as a credit in the service charge accounts and retained in the fund and used to defray service charge expenditure.

Insurance and Insurance Commissions

4.17 Under section 30A of the Landlord & Tenant Act 1985 and the Schedule to the Act, landlords must supply to tenants who contribute to insurance costs a summary of the policy and must also, if the tenant makes a request in writing, permit the tenant to inspect any relevant policy or associated documents and to take copies.

4.18 An insurance commission payable to a manager is, in effect, a discount on the cost of insurance, which should be passed on to tenants. However, unless the arrangement of insurance is a service included in the management fees under the terms of the management agreement, the manager is entitled to make a reasonable charge for arranging insurance.

Variation of Leases

4.19 Under section 38 of the Landlord & Tenant Act 1987, an LVT has power, in defined circumstances as set out in section 35 and on the application of a party, to vary the terms of a residential lease if the lease fails to make satisfactory provision for insurance; repair or maintenance; the provision of services; or the allocation and computation of service charges. If one or other party is prejudiced, compensation may be payable. Most commonly, this power is exercised in cases where the service charge contributions do not add up to 100%; but there may be other situations in which the power can be exercised. It cannot be exercised to vary service charge provisions on grounds of general unfairness. Of course, where the leases of the Applicants are varied, it is likely to be necessary to vary the leases of all contributing tenants.

4.20 Additionally, under section 37 of the Act of 1987 an application may be made to the LVT for variation of two or more long leases of flats let by the same landlord. The flats need not be in the same block and the leases need not be in identical terms. There is no restriction on the purpose for which such variation may be sought and the LVT may order the variation if the object to be achieved cannot be satisfactorily achieved unless all the leases are varied to the same effect. An essential requirement under section 37 is that a prescribed majority of the parties, the holder(s) of each lease counting as one party and the landlord(s) also being counted as one party. Where there are less than nine leases all, or all but one, of the parties must consent. Where there are nine or more leases, at least 75% must consent and there must not be opposition by more than 10%.

Costs of enforcing covenants

4.21 A landlord is entitled under section 146 of the Law of Property Act 1925 to recover from

a tenant in breach of covenant costs (including legal costs and surveyors' fees) reasonably incurred in enforcing the covenants. It is not necessary for the landlord actually to seek forfeiture of the lease in order that such costs may be recoverable. In most cases, the lease will contain an express covenant requiring the defaulting tenant to pay those costs. Such costs are not confined to costs recoverable through the Courts, which may often be considerably less than the actual costs incurred.

4.22 A landlord who has more than one residential tenant holding a long lease in the same building generally has an obligation to each residential tenant to enforce the covenants against other tenants. That is in the interests of the tenants generally, as it tends to maintain standards in the building and to ensure that tenants generally do not suffer nuisance, annoyance or inconvenience through the unreasonable conduct of any individual tenant. Enforcement of the service charge provisions is, of course, important to ensure that every tenant pays his fair share.

4.23 However, if the costs of enforcing the covenants cannot be recovered from the defaulting tenant, the landlord is generally entitled to recover those costs from the tenants generally through the service charge provisions. If he seeks to do so, the tenants are entitled under section 27A of the 1985 Act to challenge those costs on the ground that they excessive or were not reasonably incurred.

Costs generally

4.24 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (e.g. the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.25 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.

4.26 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

5.1 The Tribunal took as its starting point the final service charge account for 2009-10. We looked at each item in the light of final written representations from the parties. This informed our consideration of the service charge budgets for 2009-10 and 2010-11. Finally, the Tribunal considered the other issues raised by the application in relation administrative charges.

Non-contentious items

5.2 Insurance costs at £1,676.48 are not fully evidenced but, having regard to the evidence of earlier premiums, the Tribunal is satisfied that they are reasonable. Electricity costs appear to include arrears that accumulated during the management hiatus. The total of £392.19 appears reasonable and is allowed as claimed.

5.3 The Tribunal is satisfied that a number of fence panels were renewed and the cost of £1,500 as invoiced was reasonably incurred.

5.4 Diane Pryke appears to be working on a self-employed basis as a gardener/caretaker. She is charging £250 per month plus all equipment and materials. It is not clear whether this is a long-term contract in respect of which there should have been statutory consultation. However, this issue was not pursued by Mr Storey. Although the volume of work will vary during the year, the Tribunal considers that this cost is reasonable overall. At that price, the leaseholders are entitled to expect a good standard of service. There is, however, a duplication in her invoicing as regards a sum of £80.62, which the Tribunal deducts from the total claimed, leaving £2,917.70 under the heading of gardener/caretaker.

5.5 The Tribunal notes that the invoice for £900 expressed to relate to Burnham Lodge is (quite rightly) no longer included in the audited service charge account for Beverley Court. There is no evidence in support of the suggestion, made by Mr Spelzini, that work included in that invoice may have been done at both properties. Dr Chhabra pointed out that Burnham Lodge has extensive grounds. The Tribunal saw no evidence upon inspection of work of the type described in the invoice (cutting own a large tree near the footpath and pruning and reducing two silver birch trees. In any event, Mr Spelzini's suggestion does not explain why the whole of the invoice was charged to the leaseholders at Beverley Court.

5.6 Bank charges at £92.40 (the initial figure of £102.40 was corrected by the accountants after preparation of the accounts) were not disputed. The Tribunal is satisfied that these charges were reasonably incurred.

Repairs

5.7 Under this heading are included a fire risk assessment, an electrical survey and works pursuant to the electrical survey report. The Tribunal considers that all these costs were reasonably incurred. The other items under this head all relate to invoices from Ernie Teague for items listed in the freeholder's Schedule of Dilapidations. It is unfortunate that matters were allowed to deteriorate; but the Tribunal is satisfied that the works were reasonably necessary, that the works were carried out to a reasonable standard and that the costs claimed were, with one exception, reasonably incurred.

5.8 The exception relates to the invoice of 31 July 2009 in the sum of £805. This work was estimated at £555, which included £180 for power washing to remove algae stains caused by the water leak. The additional disclosure pursuant to the order of 25 June 2010 included a note from Mr Teague (not available at the time of the hearing) informing his employer that no pressure washing was carried out for the very good reason that there was no water supply. Mr Teague tried washing the wall with patio

cleaner and wire brushing but (as was apparent on inspection) with limited success.

5.9 The Tribunal considers it unreasonable to allow more than £50 for this work, as it must have become apparent quite quickly that it was a waste of time. Mr Spelzini's suggestion at the hearing that additional power washing was carried out was completely wrong. This cast doubt on the other part of his explanation for the amount of the invoice.

Mr Teague refers to his estimate as a quotation; but his invoice does not detail any additional work. The Tribunal is not satisfied on the evidence that any additional work was done and accordingly allows only £425 in lieu of the £805 claimed. The total under the heading "Repairs" is thus reduced to £5,115.27.

Surveyor's fees

5.10 It was reasonable to employ a surveyor to deal with the dilapidations. Mr Storey accepts that Mr Spelzini's fee for that work at £700 was reasonable. The asbestos survey is a legal requirement and the level of fee well within the usual range. The Tribunal is satisfied that the Amiantus fee of £528.75 was reasonably incurred. Two further items of Mr Spelzini's fees are claimed, at a total of £532. The work covered by those invoices appears to relate to the Applicants' application to the Tribunal. The Tribunal has jurisdiction to disallow such fees and, as will be seen, disallows them. Thus the total under the heading surveyors' fees is reduced to £1,228.75.

Legal fees

5.11 Under this heading are included three invoices from Kerseys. The first (in the sum of £429.50) relates to the section 146 notice served on Mr Bevan. The second (in the sum of £407.65) relates to a dispute with Mr Grunbaum. The third (in the sum of £1,057.50) relates to a dispute with Dr Chhabra. It is our understanding that all these disputes relate primarily to unauthorized sublettings. The first two invoices include fairly detailed particulars of the work carried out; the third invoice includes no particulars at all. The Tribunal has received a letter from Tinklers, solicitors acting for Mr Grunbaum, (enclosing a section 146 notice dated 8 February 2010) and a letter dated 16 March 2010 from Ross Coates, solicitors acting from Dr and Mrs Chhabra, which letters make it clear that their clients are in a similar position to Mr Bevan. This is, in effect, confirmed in his witness statement by Mr Gold.

5.12 Generally, where a tenant is in breach of covenant, a landlord who has grounds for serving a section 146 notice is entitled to recover his reasonable costs of enforcement from that tenant. It appears fair to comment that it is doubtful whether it is reasonable for a landlord receiving only ground rent to demand bank references, or indeed any references, as a condition of a licence to sublet a small cheap flat in Ipswich on assured shorthold terms. The same is true of the demand for a solicitor's undertaking as to costs. Moreover, by imposing the condition that Mr Bevan must pay all the service charges (a considerable part of which the Tribunal has disallowed) in order to avoid further enforcement, Kerseys may have compromised their clients' rights to recover further costs. Certainly, that was a condition that Mr Bevan was, in our view, justified in rejecting, given the dispute over service charges and the findings of this Tribunal. Possibly, the breach of covenant by subletting without consent was, in any event,

waived. However, as between the parties, these issues are matters for the courts and outwith the jurisdiction of the Tribunal.

5.13 Although no application has been made in this respect, it has been suggested by the Applicants that the leases should be varied to simplify and reduce the cost of obtaining licences to sublet. However, it does not appear that the Tribunal has any jurisdiction under section 35 of the Landlord & Tenant Act 1987 to vary leases on that ground.

5.14 However, it appears that, if ten of the tenants agree to apply for lease variations and only the landlord opposes, the Tribunal will have power under section 37 to make reasonable variations, in which event compensation may be payable to the landlord. One recourse for tenants who are dissatisfied with their leases and their landlord is, of course, to club together and buy the freehold, as they have a right to do under the provisions of Part 1 of the Leasehold Reform Housing & Urban Development Act 1993.

5.15 Meanwhile, whether the Respondent is entitled to include in service charges or otherwise recover from other tenants legal expenses incurred in enforcing covenants against a tenant in breach depends firstly upon the provisions of the underleases. Paragraph 11 of the Sixth Schedule does not assist the Respondent. There is no evidence that any tenant asked the landlord to enforce the covenant against subletting; on the contrary, all those interested in the matter do not want the covenant enforced. In any event, the Tribunal does not consider that a breach of that covenant of itself affects any other flat, in which case the other tenants have no right to require the Respondent to enforce the covenant, even in the unlikely event that they wished so to do.

5.16 It might be argued that the relevant costs were chargeable as "expenses of the Lessor in connection with the collection of rents and for general management" under paragraph (e) of the Fifth Schedule. And paragraph (h) of the Schedule refers to "other expenditure which the Lessor shall consider necessary or desirable in the interest of the general management and or maintenance of the Building and the Property". Clearly paragraph (e) relates also to the management of the Building and the Property. Unless "general management" includes enforcement of the covenant against subletting without consent, the costs in question are not recoverable from the tenants generally through the service charge provisions or otherwise (though they may, as has been indicated, be recoverable from the tenant in breach).

5.17 The landlord might argue that it is in the interests of tenants that assignees and subtenants of other flats are suitable persons, both from a financial point of view (because of the shared service charge obligations) and from a personal point of view (to avoid nuisance, annoyance or illegal activity upon the premises). The tenants might respond that the landlord is under no obligation to consult them or consider their convenience in deciding whether or not to grant a licence to assign or sublet. In any event, the landlord's argument has no force in relation to subletting by way of assured shorthold tenancies. It is the leaseholder (who has already been vetted) who must pay the service charges, not the subtenant. Any sensible leaseholder will vet his subtenants and can evict them fairly swiftly if they do not pay the rent or cause a nuisance or annoyance to neighbours. In practice, the covenant against subletting, insofar as it affects assured shorthold sublets, is essentially for the benefit of the landlord. It may assist the landlord in fulfilling his obligations to leaseholders; but it is primarily a means

of extracting a substantial fee from leaseholders on a regular basis.

5.18 The Tribunal concludes as a matter of construction of the lease that "general management" does not include enforcement of the covenant against assignment or subletting. Accordingly, the lease does not permit the landlord to recover the costs claimed from tenants through the service charge provisions. If acting reasonably, the landlord can generally recover such costs from the defaulting leaseholder.

5.19 In case we are wrong in that conclusion, we have also considered whether the expenses claimed were reasonably incurred. We consider first the scale of the charges. Kerseys' invoices in relation Flats 1 and 4 appear reasonable having regard to the work done. There is no explanation as to why the costs in relation to Flat 6 (Dr Chhabra) are so much higher, though there is no evidence of service of a section 146 notice. The correspondence would probably be copied from the other cases. One possible explanation (the most likely explanation in our view) is that, in Dr Chhabra's case, there are two flats involved, one being at Burnham Lodge. Doing the best we can on limited evidence, the Tribunal concludes that no more than £300 + VAT would be reasonable, as regards Flat 6, in that case. Thus the total claimed for legal fees is reduced from £1,894.65 to £1,194.65.

5.20 The next question is whether it was reasonable to instruct solicitors at all. In our view, a landlord in this situation should first attempt to resolve the issue amicably. The landlord is under an obligation not to refuse consent unreasonably. The first step should therefore be to remind the leaseholder politely of the parties' respective legal obligations and make enquiries about the subtenant. There is no evidence that anything of this character was attempted. It must be borne in mind that the leaseholder is likely to find it difficult to extract information from a short-term subtenant who already has his lease and almost impossible to impose additional covenants upon such a sub-tenant. The Tribunal concludes that solicitors were employed mainly for the purpose of applying pressure to the leaseholders to pay licence fees and service charges which (as will be seen) the Tribunal considers unreasonable. Accordingly, the Tribunal concludes that the legal costs were not reasonably incurred. Either way, the legal costs are all disallowed.

Miscellaneous expenses

5.21 Samnat has included a charge of £320 under this heading, allegedly for postage etc. No post book or other supporting documentation has been disclosed. It is inevitable that a managing agent will incur disbursements such as postage. However, it is usual, particularly where the agents' fee is based on a percentage of expenses incurred, for small overheads of this type to be included within the global fee. Of course, where substantial extra work is involved, as may be the case where there is a major refurbishment project, managing agents will be entitled to fees for managing such projects. Where professional fees are incurred in connection with major building projects, it would be usual for the managing agents to charge a reduced percentage for their involvement. However, in this case, the evidence is of routine expenditure. The landlord did not engage the managing agents at arm's length and there appears to be no management contract. In all the circumstances of the case, the Tribunal considers that the miscellaneous expenses should be absorbed by the managing agents. The charge of £320 is disallowed.

Accountancy fees

5.22 Accountancy fees appear in Mr Spelzini's schedule at £750 (as per the estimate in the 2009-10 budget statement). This appears to be a clerical error. The actual cost was £587.50, which is accepted by the Applicants as reasonable. The Tribunal points out that this is a limited type of audit and does not extend to verification of the expenditure claimed. Although the accountants failed to pick up the £80.62 double-charged by Ms Pryke, the exercise appears to have been carried out in a professional manner.

The Tribunal agrees that this cost, which provides important protection for tenants, was reasonably incurred.

Ground rent collection fee

5.23 The lease permits the landlord to charge tenants a reasonable fee for the collection of ground rents. The charge of £116.37 is said to be based on 17.5% of total rents (though there seems to be a slight miscalculation, as ground rents – on the evidence – appear to total £660 and not £665). However, the charge is not disputed. The Tribunal considers that this item is not strictly part of the service charge and certainly cannot reasonably attract the percentage management fee. There can be no justification for Samnat to collect 15% commission on its own fees.

Management fee

5.24 The Tribunal's findings on the above items affect the amount of the management fee. The effect of the Tribunal's findings is set out in the Schedule to this Decision. The Tribunal allows service charge expenditure (apart from management) for 2009-10 in the sum of £12.010.29. 15% of that is £1,801.54. Thus the total service charge account, on the basis of Samnat's method of charging fees, amounts to £13,811.83. To that can be added the ground rent collection fee of £116.37, making a grand total of £13,928.20.

5.25 In the experience of the Tribunal, 15% is an unusually high percentage to charge for management of a very ordinary block of flats without any obvious complications. The RICS recommends a flat rate charge. In relation to this type of block in this location, £150-175 per flat, to include routine management, collection of ground rents and disbursements, might be considered reasonable. That would amount to a total of £1,800-2,100 exclusive of VAT. In that context, the management charge at £1,801.54 is not unreasonable. However, the Tribunal wishes to make it clear that this decision is not a general endorsement of Samnat's practice (in 2009-10) of charging 15% of costs incurred in relation to building works supervised by a chartered surveyor. How much it would be reasonable to charge would depend upon the facts of the case, including the amount of the surveyor's fee and the nature and extent of the work actually done by Samnat.

5.26 Accordingly, the Tribunal finds that the total payable by the leaseholders for 2009-10 is £13,928.20. Insofar as any leaseholder has paid more than his or her apportioned share of that grand total, he or she is entitled to credit against the service charge account. If, bearing in mind the Tribunal's finding as regards the 2010-11 budget and advance service charge provision, any leaseholder has overpaid, he or she is entitled to a refund. It is entirely a matter for individual leaseholders whether to demand a

refund or leave the sums overpaid in Samnat's hands on account of future service charges.

5.27 It is to be hoped that Samnat will issue revised service charge statements in accordance with the findings of the Tribunal and that the individual balances can be agreed. If not, the Applicants have permission to apply to the Tribunal for a determination of those balances. In order that the Tribunal can close its file in the not too distant future, the Applicants will be allowed three months to apply if so advised.

Budget statements and service charge payments on account

5.28 The budget statement for 2009-10, on the basis of which Samnat demanded and sought to enforce service charge advance contributions, totaled £31,545.87, which included a £10,000 charge in respect of the section 146 costs claimed by the freeholder. Mrs Kemp appears to have assumed that any costs connected with Beverley Court, however incurred, could be recharged to leaseholders. This is simply not correct. Clearly, the rent payable by the head lessee to the freeholder is nothing to do with the leaseholders. The head lessee must pay its rent whether or not the leaseholders pay theirs. In any event, there is no reason to suppose that, had they been asked to pay, they would not have complied.

5.29 The head lessee must comply with its repairing covenants even if the leaseholders are refusing to pay their service charge contributions. In this case, there is no reason to suppose that the leaseholders would not have paid reasonable contributions to the costs of maintenance had they been asked for them. The neglect that led to the section 146 notice was entirely the fault of the head lessee and its various managing agents. It is apparent that Mr Gold knew that Mr Tish had died soon after the event. New managing agents Opus Property Consultants Ltd were appointed in 2008 and no explanation has been given as to why they did not deal with the dilapidations. The Tribunal has no hesitation in concluding that the freeholder's section 146 costs are the responsibility of the Respondent and cannot properly be included in any service charge accounts.

5.30 The Respondent appears to be arguing that the Applicants should not object to paying far more than the actual costs for 2009-10 because that has enabled Samnat to buildup a reserve fund for future expenditure. However, the lease permits the landlord to collect only fair and reasonable payments on account of anticipated expenditure, including periodic expenditure whenever incurred. If the landlord intends to collect monies on account of expenditure in future years, the purpose of that expenditure must be identified, the costs estimated and the anticipated timetable notified to tenants. It is also pertinent to mention that inflated service charge budgets lead to inflated management fees. In respect of the £10,000 section 146 costs, the management fee claimed amounts to £1,500, even though the dispute is being dealt with mainly by others. In the judgment of the Tribunal, the service charge demands for 2009-10 were, on these grounds alone, unreasonable and the Applicants were justified in withholding payment.

5.31 Turning to the remainder of the budget statement, the total claimed net of management fee and ground rent commission is £17,330. The management fee at 15% of that is £2,599.50 (compared with the £4,099.50 claimed). The Tribunal reminds itself that it

must be wary of using hindsight when judging the validity of an estimate.

5.32 However, in the judgment of the Tribunal, a number of the remaining items were obviously open to challenge The insurance costs at £2,750 were very substantially higher than for the previous year. It is not clear where this figure came from. . Insurance premiums are paid in advance, so that quite soon became an actual cost. When insurance was arranged in July, the premium was £2,350.48. Subsequently, in September 2009 the figure was reduced to £1,676.48, apparently because of some change in the cover. In the judgment of the Tribunal, more care should have been taken over this substantial item at the outset. To claim £2,750 was unreasonable.

5.33 It is unexplained why common parts electricity charges were estimated at £1,100 when previous charges were running at around £40 per quarter. The Tribunal assumes in the Respondent's favour that the electrician's costs for his survey and remedial works were included. On that basis, the figure was clearly reasonable. There was no basis for the estimate of £1,000 for water rates. Apart from the enormity of the sum (which would cover a massive consumption of water), Mrs Kemp ought to have known that there was no communal water supply.

5.34 Professional fees at £4,500 are assessed on the basis (erroneous as we have found) that all legal fees incurred could be passed on to leaseholders. However, if one reduces the insurance estimate to £1,750 and the professional fees to £1,500 (for surveyors' fees) and removes water rates and miscellaneous expenses, the total estimate before management fees would have been £12,010, which the Tribunal would consider perfectly reasonable as a pre-estimate by newly appointed managing agents.

5.35 The leaseholders were entitled to expect that the budget statement for 2010-11 would be a fairly accurate estimate of anticipated expenditure. Substantial works had been carried out during 2009-10 and the involvement of Mr Spelzini should have ensured that any works likely to be needed in the following year were identified and costed. However, the Tribunal does not find the statement to be a very satisfactory document in a number of respects.

5.36 Firstly, it is not clear why the caretaker/gardener, whose remuneration appears on the generous side, is not paying for her own public liability insurance, as would be the usual arrangement for an independent contractor. Secondly, it is entirely unclear what external maintenance is to be done at a cost of £3,000 or internal maintenance at a cost of £2,000. Following the 2009 works, it seems unlikely that much will need to be done in 2010-11. If the intention is to accumulate a reserve fund, Samnat must say what the fund is for and how the amount is calculated. The Tribunal would expect Samnat to produce a costed maintenance plan. Housing associations in some cases have ten-year maintenance plans. However, in this type of case, a five-year plan might be more realistic. In the absence of such a plan, the Tribunal does not consider it reasonable to make any provision by way of reserve fund.

5.37 What then, is likely to be needed by way of internal and external maintenance in 2010-11? No evidence was given of any specific expenditure except the installation of emergency lighting, which appears to be a reasonable precaution. Grounds maintenance is covered by the provision for a caretaker/gardener. Separate provision

has been made for gutter and drainage clearance; the sum provided appears reasonable, given the need for a cherry picker platform. The only other item that springs to mind is pressure washing of the stains on the external flank wall, estimated by Mr Teague at £180. Some additional allowance for unexpected items would be reasonable. The Tribunal considers a total of £1,000 to be ample under these two heads.

5.38 There is no reason to anticipate any re-chargeable professional fees in 2010-11. As has been indicated, the miscellaneous expenses for which an allowance of £320 has been made should, in the judgment of the Tribunal, be absorbed by Samnat. The Tribunal does not consider the other items to be unreasonable.

5.39 Thus the figure the Tribunal considers reasonable by way of advance service charge provision excluding management fee is £9,365, as shown in the Schedule. Management @ 15% would then amount the £1,404.75. The ground rent collection charge @ 17.5% should, on the evidence, be £115. Thus the total the Tribunal considers it reasonable to collect in advance from the leaseholders for 2010-11 is £10,884.75.

Administrative fees

5.40 The Applicants complain that the arrangements proposed by the Respondent and Samnat for the grant of licences to assign and sublet and the registration of assignments and sublettings are far too complex and expensive for leaseholders and that the fees charged by HND and Samnat are excessive. The evidence is that £550 is charged by HND for a licence to assign and £300 for a licence to sublet. £100 is charged by Samnat for providing service charge information on an assignment. Registrations are charged at £15 per transaction. An assignment will typically involve two transactions, the assignment itself and a mortgage.

5.41 The Tribunal does not consider it unreasonable to charge £15 for registration of each transaction. The Respondent needs to keep a record of assignments, mortgages, the names and addresses of the parties and the dates. This is not a complex process; but it needs to be done carefully.

5.42 On an assignment of an underlease, the landlord is entitled to be satisfied that the assignee is a responsible person who is likely to be able to meet the rent and service charge obligations. In addition, the landlord may be asked to provide information about the property that is of importance to the assignee and his mortgagee. This may well involve the employment of solicitors who should, however, charge reasonable fees. In the case of a block of small and fairly cheap flats in Ipswich, fees should be charged in accordance with local rates. In the judgment of the Tribunal, there is no justification, on the facts of this case, for employing solicitors in Guernsey if the effect of this is to inflate legal costs.

5.43 In the judgment of the Tribunal, £550 is an unreasonable fee to charge for granting licence to assign. The process is relatively straightforward from the landlord's point of view and the processes involved are repetitive. Given that assignments are a fairly common event, the landlord and the landlord's solicitors should be familiar with the process and have the relevant template letters, licence document and information

readily to hand. In the judgment of the Tribunal, a reasonable fee for the whole process would, unless some unusual difficulty was encountered, be no more than £300 plus VAT (if applicable).

5.44 In the case of licence to sublet, the landlord is not required to provide information. All that is required is to send a couple of standard letters, draft a standard licence deed to include direct covenants to be entered into by the subtenant, check references and receive the executed deed from the subtenant. This will be routine repetitive work not requiring a high level of legal skill. Most of the work will be done by the leaseholder and the subtenant. In the judgment of the Tribunal, a reasonable fee, unless some unusual difficulty was encountered, would be £175 plus VAT (if applicable).

5.45 The information to be provided by Samnat (on an assignment or mortgage only) is likely to be service charge information and information about any major maintenance projects in hand or anticipated in the near future. This is information that should be readily to hand. The enquiry will be dealt with by Samnat's own staff. In the judgment of the Tribunal £100 is not an unreasonable fee for this process.

Costs

5.46 The Tribunal has no power to award costs generally. The reason for this is to avoid discouraging tenants of modest means from making applications. Landlords often threaten dissatisfied tenants with huge legal bills if they do not fall into line. It appears that the Respondent's costs have, indeed, been substantial. PQS invoices so far are for £150, £382 and £874.30, a total of £1,406.30. There may be a further invoice for preparation of the response to the directions order of 25 June 2010 and written representations in relation thereto. Mr Gold apparently wishes to charge £3,450 for his input. Samnat would like to charge £1,050 for assembling the documents and a total of £78.37 for copying charges.

5.47 The Applicants asked in the initial application for an order under section 20C of the 1985 Act. This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.

5.48 However, in some cases, the landlord's conduct of his defence may be a reasonable exercise of management powers even if he loses. The landlord may have made an offer the tenant ought to have accepted. In such cases, it might be reasonable for the tenants generally to bear those costs. In other cases, for example where the non-party tenants supported the unsuccessful landlord, it might be reasonable for the non-party tenants to contribute to the landlord's costs. A wide variety of circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.49 It is clear that the Applicants have been substantially successful. In the judgment of the Tribunal, the Respondent has been selective in the information given to the Tribunal

and, in the face of a very specific disclosure order, in the disclosure given. The Tribunal has found the Respondent's defence to be unreasonable in a number of respects. Overall, the Tribunal concludes that it would be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating his costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property. The Tribunal will so order.

Geraint M Jones MA LLM (Cantab)
Chairman
26 July 2010