

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/00HN/LSC/2009/0142

**DECISION AND REASONS**

**Application** : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”) and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

**Applicant/Landlord** : Residential Freehold Limited

**Respondent/Leaseholder** : Mrs Ann Harrison Combeer

**Building** : The Sleepers, Northcote Road, Bournemouth, BH1 4SG

**Flat 7** : flat 7 in the Building

**Date of Transfer from Bournemouth County Court** : 21 September 2009

**Date of First Directions** : 14 October 2009

**Date of Second Directions** : 15 December 2009

**Date of substantive hearing** : 17 March 2010

**Venue** : Disraeli Suite, Royal Bath Hotel, Bath Road, Bournemouth, BH1 2EW

**Appearances for Applicant/Landlord**: Mr P Bush, Counsel

**Appearances for Respondent/Leaseholder**: Mrs Combeer

**Members of the Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr P D Turner-Powell FRICS, and Mrs J E S Herrington

**Date of Tribunal’s Reasons** : 24 March 2010

**Introduction**

1. In an action started by particulars of claim dated the 4 February 2009 and headed “Hitchin County Court”, the Applicant/Landlord claimed from the Respondent/Leaseholder the sum of £2,559.28 for ground rent, service charge, interest, “arrears letter charge”, “admin charge”, and “PDC fee”, made up as shown on a statement, a copy of which is annexed to these reasons as Appendix A
2. In a defence dated the 14 May 2009 and headed “Chelmsford County Court, case number 9CM01154”, the Respondent/Leaseholder stated that :

- a. the statement copied at Appendix A to these reasons contained 2 items for service charge, each in the sum of £873.21
- b. the items of expenditure claimed by the Applicant/Landlord for the year up to 31 December 2009, which had then been apportioned between the 14 flats in the Building, were as follows:
 

•	audit fees	£350
•	cleaning	£2,400
•	electricity	£450
•	gardening	£1,250
•	general maintenance	£2,000
•	management fee	£3,150
•	property insurance	£2,625
- c. under clause 10 of the 4<sup>th</sup> schedule to the lease the Applicant/Landlord was required to keep or cause to be kept proper books of account of all costs charges and expenses incurred in carrying out its obligations and provide a fair summary in writing certified by a qualified accountant to the Respondent/Leaseholder; the Respondent/Leaseholder had never received any form of summary of the expenditure by the Applicant/Landlord
- d. the standard of cleanliness of the common parts of the blocks of flats during the previous year, for which an identical amount of maintenance charge was demanded, was deplorable; during the period the cleaner was employed, and as a result the service never reached a reasonable standard
- e. the Respondent/Leaseholder had never been provided with copies of electricity bills or breakdowns; the demand was for an identical figure to the one for previous years, and, as energy bills fluctuated from year to year, it was not possible without evidence to determine whether the electricity costs had been reasonably incurred
- f. the Applicant/Landlord had never carried out work to the garden and had never employed a gardener despite the same amount for gardening being charged for the previous year; the Respondent/Leaseholder and other tenants of the Building had been required to take on the responsibility for the garden themselves
- g. the Applicant/Landlord had never carried out any general maintenance of the Building and, if any maintenance was now required, it was as a result of the neglect of the Applicant/Landlord to fulfil its obligation for the upkeep of the Building
- h. in view of the neglect which the Applicant/Landlord had shown under its obligations under the lease the management charge now claimed was not reasonable
- i. the Applicant/Landlord had not provided to the Respondent/Leaseholder the current insurance policy or the receipt for the last premium paid as required under clause 5a of the 4th schedule; without that information it was not possible to determine whether the insurance costs were reasonable
- j. even if the Applicant/Landlord intended to use the sums demanded for the current year in order to carry out its obligations, credit should be given for the advance payment made in the previous year and for previous maintenance charge payments
- k. the notice for payment required under clause 2 of the 6th schedule should be provided together with a summary in writing certified by a qualified accountant of the costs incurred and moneys expended by the Applicant/Landlord during the previous year up to the 1 January together with a notice in writing of the actual amount of the Respondent/Leaseholder's liability for the previous year; in the absence of the summary and notice, the Applicant/Landlord had not properly demanded the advance maintenance charge payment for the current year

- l. the Applicant/Landlord had failed to include its name in the demand for the service charge which was accordingly not owing by virtue of section 47 of the Landlord and Tenant Act 1987 (“the 1987 Act”)
  - m. the statement copied at Appendix A to these reasons included interest to which the Applicant/Landlord was not entitled under the lease
  - n. the Applicant/Landlord was not entitled under the lease to charge administration costs in order to obtain payment of unpaid charges
3. On 31 July 2009 the claim was transferred from the Chelmsford County Court to the Bournemouth County Court
4. On 9 September 2009 the Bournemouth County Court stayed the claim pending determination by the Tribunal of the reasonableness of the service charges

### **Statutory Provisions**

5. Section 19(1) of the 1985 Act provides as follows :

*19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*

- (a) only to the extent that they are reasonably incurred, and*
  - (b) where they are incurred on the 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*

6. The material part of schedule 11 to 2002 Act is as follows :

*2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable*

### **Documents**

7. The documents before the Tribunal are :
  - a. the Tribunal’s bundle
  - b. the Applicant/Landlord’s bundle, sent on 13 November 2009
  - c. the Respondent/Leaseholder’s witness statement, sent on 30 November 2009
  - d. the Applicant/Landlord’s bundle of photographs sent on 15 January 2010

### **Inspection**

8. The Tribunal inspected the Building on the morning of the hearing on 17 March 2010. Also present were Mr John Brown of Flat 6, and Mr Edward Argyle
9. The Building comprised a “staggered” terrace, which Mrs Combeer said had been built just before she bought Flat 7 in 2005. It was brick built, with a tiled pitched roof. A low fence ran along the front of the Building next to the pavement. There was gravel between the fence and the wall of the

Building. Mrs Combeer said that tall weeds there had been cleared a few days before

10. There are plans of the Building attached to the lease in the Tribunal's bundle, and photographs in the Applicant/Landlord's bundle of photographs
11. There were metal gates on the left hand side, looking from Northcote Road. These led to a rear tarmac car park, with 10 numbered spaces. At the rear was a wooden fence, with circular lights. Mrs Combeer said that the light at the left hand end of the car park did not work. Leading from the right hand end of the car park was a small paved path. Between that path and the rear fence was a small lawn. Mr Brown said that it had been laid with inadequate topsoil, which was why the grass was in poor condition. There were some shrubs between the lawn and the fence. Between the Building and the path were some small areas of shrubs, separated from the path by low fences. Mrs Combeer said that the residents maintained those areas of shrubs. There was also a brick built enclosure. Half of it was open, with clothes lines. The other was covered, and had padlocked wooden doors
12. There was a car port underneath the right hand end of the Building, looking from Northcote Road. It was laid to tarmac, with 4 numbered spaces. A downpipe from the guttering was not connected
13. The Tribunal also inspected the communal front door, lobby, stairway, and landing leading to Flats 2 (ground floor) and 7 and 8 (first floor). Mrs Combeer said that there were 3 other similar communal areas. There were also 2 front doors leading exclusively to one Flat, such as the one to Flat 1, next door to Flat 7. The communal front door had an intercom and buzzer. Mrs Combeer said that the buzzer worked only intermittently. The lobby and landing were both very small. They, and the stairs, were carpeted. The walls and ceiling were painted white. The paint work needed some attention. Mrs Combeer pointed out a crack round each of the door frames of Flats 7 and 8

#### **The lease of Flat 7**

14. The lease was dated the 6 May 2005. It showed the Respondent/Leaseholder's address as Flat 7 Park Court, 19 [sic] Bournemouth Road, Lower Parkstone, Poole, Dorset, BH14 0HA
15. For the purposes of these proceedings the material parts of the lease are as follows :

#### ***Third schedule Part 1 - covenants by the lessee***

*(p) to pay the maintenance charge to the lessor within twenty one days of the receipt of the demand*

#### ***Fourth schedule - covenants by the lessor***

*2 to keep in good and substantial repair and condition*

- (a) the roofs and outside walls and foundations and structure.....*
- (b) the passageways hallways landings and staircases in the Building*
- (c) the cycle store footpath and gardens/landscaping of the Estate*
- (d) the boundary walls or fences of the Estate*
- (e) the driveway and car parking areas and car parking forecourt*

3 [ to paint the outside]

4 to keep all passages landings and staircases in the Building..... clean and reasonably lighted and decorated and further to clean the exterior surface of the windows in the Building

5 [to insure] and on request (but not more often than once a year) to produce to the lessee the current policy or policies and the receipt or receipts for the last premium paid

6 .....

7 .....

8 .....

9 .....

10(a) to keep or cause to be kept proper books of account of all costs charges and expenses incurred in carrying out its obligations hereunder and of all contributions received by the lessor or its agents for the time being from the lessees of the flats in the Estate .....

(b) as soon as practicable after the first day of January in every year deliver to the lessee of each flat in the Estate or being let under long leases:

(i) a fair summary in writing certified by a qualified accountant of the costs incurred and moneys expended by the lessor during the year immediately prior to the said first day of January in complying with its covenants in this lease set out in a way which shows how the said costs incurred and moneys expended are or will be reflected in demands for payment under clause (p) of part one of the third schedule of this lease and showing separately the amounts expended under the terms of this schedule of the lease hereof

(ii) a notice in writing of the actual amount of the lessees liability for the aforesaid previous year under the provisions of the sixth schedule of this lease

(iii) a notice in writing of the amount due from the lessee under clause 2 of the sixth schedule of this lease credit being given for the amounts paid under the said clause 2 of the sixth schedule of this lease

11 .....

### **Sixth Schedule - the maintenance charge**

1 The maintenance charge payable by the lessee shall be a yearly sum in respect of each year ending on 31 December equal to one fourteenth of the total of the following

(a) the cost to the lessor of complying with the covenants on the part of the lessor in paragraphs 2(a – e), 3, 4, 5, 9 and 10 of the fourth schedule including the employment of contractors in connection therewith

(b) the fees and disbursements paid to any managing agents..... for the management of the Estate and the provisions of services therein

(c) the costs (including the costs of the lessor's auditor) of ascertaining the maintenance charge and the keeping of any necessary books of account

(d) a contribution fixed annually by the lessor to provide a reserve fund to cover accruing and anticipated expenditure in respect of the compliance with the covenants on the part of the lessor

(e) the hire charge or other expenses paid by the lessor in respect of any communal refuse bins provided for the storage of household refuse of the lessees owners and occupiers of the flats in the Building and the repair and renewal thereof

- (f) *all other proper and reasonable expenses (if any) incurred by the lessor in and about the maintenance and proper and convenient management and running of the Estate*
  - (g) *an administration charge of 15% plus VAT of the total cost and expenses and outgoings of the lessor of the costs involved in the management of the Estate and the provisions of services therein in the event that the lessor does not appoint managing agents*
  - (h) *[VAT]*
- 2 *The maintenance charge shall be paid*
- (a) *by payments on account of the sum conclusively estimated by the lessor as being the likely maintenance charge for the year in question on the 1st January in each year or such other date as the lessor shall require*
  - (b) *the balance (if any) within seven days of the service on the lessee of the certificate of the lessor's auditor as to the total referred to in paragraph 1 of this schedule in respect of the preceding year of the term*
- 3 *The lessor's certificate as to the amount due to the lessor shall be conclusive unless manifestly wrong but otherwise any dispute between the parties shall be determined by the Surveyor*

**Witness statement of Laurence Freilich 13 November 2009**

16. Mr Freilich stated that he was the senior property manager of Moreland Estate Management Limited, who had been appointed by the Applicant/Landlord to act as managing agents in respect of the collection of service charges at the Building. He also acted as the property manager in respect of the management of the estate
17. The demands listed in the statement copied at Appendix A to these reasons under the heading "description" were sent to the Respondent/Leaseholder on the dates corresponding to the relevant entry. The Applicant/Landlord sought to recover the unpaid service charges and administration charges only. The Applicant/Landlord waived its claim to interest and "arrears letter charges", so that the Tribunal was not concerned with those, or with the claims for ground rent
18. In relation to service charges, the Respondent/Leaseholder claimed not to have received a summary of the costs. That was untrue. Copies of the service charge accounts for the Estate were attached. In accordance with the lease those accounts had been prepared as soon as was practicable, having regard to the accounting process of completing the accounts. Copies of the accounts were delivered/posted to the Respondent/Leaseholder on or around 28 October 2008. The budgets were prepared and signed as being accurate on 6 August 2007 for 2007 and 19 November 2007 [sic] for 2008. Both were posted to the Respondent/Leaseholder by second-class post on the day of signing
19. The Respondent/Leaseholder took issue with the standard of services provided but also asserted that no cleaner was provided during the service charge year. That was also untrue. Copies of all the paid invoices were attached, detailing and cleaning of the communal areas. Cleaning was undertaken on a monthly basis. The only invoice not exhibited was 4 June 2008, which had not been found. However, communal cleaning was carried out for that month also. It was the Applicant/Landlord's

practice to carry out spot checks on the areas cleaned and prior to invoices being paid. Invoices would not have been paid if the works had not been done to a satisfactory level. The Respondent/Leaseholder's contributions were £177.61 for 2007, and £266.36 for 2008. The apportioned amount was the equivalent of £0.49 for 2007 and £0.73 for 2008. That charge was more than reasonable and was competitively priced. The Respondent/Leaseholder had not provided an alternative cost for the Tribunal to consider in relation to reasonableness

20. There was no requirement in the lease to provide copies of the electricity bills to the Respondent/Leaseholder. However the service charge accounts clearly set out her indebtedness in that respect. Copies of the electricity bills for the estate were attached. The utility company had been the same provider of electricity to the estate since the development had been completed. The pricing was competitive and reasonable and were the actual charges for the estate. The Respondent/Leaseholder's contributions were £17.62 for 2007 and £24.43 for 2008 which were the equivalent of five pence for 2007 and seven pence for 2008
21. It was untrue that the Applicant/Landlord had never carried out works to the garden and had never employed a gardener. Gardeners were engaged to provide gardening services monthly. Copies of paid invoices were attached. Towards the end of 2008 the Applicant/Landlord agreed with the residents, at the leaseholders' request, that they be allowed to upkeep the garden areas because of their personal preferences for flowers etc. If it was the case that the Respondent/Leaseholder and the other leaseholders no longer wished to look after the gardens then the Applicant/Landlord would re-instruct its contractors to carry out the upkeep. The leaseholders would not have been charged for the period during which they personally maintained the gardens. Included within the charges were general maintenance charges to the communal areas. By instructing one contractor not only to maintain the garden areas but also to repair as necessary items such as a broken gate in the communal areas, the Applicant/Landlord had been able to negotiate a competitive price, which had kept the cost to the leaseholders to a minimum. The charges were reasonable and reasonably incurred. The Applicant/Landlord specifically denied that the Respondent/Leaseholder or any other leaseholders had had to take on the responsibility of gardening
22. It was not the case that the Applicant/Landlord had failed to carry out general maintenance to the block. In addition to the additional works carried out by the contractors/agents Young and Harris Building Contractors referred to in the previous paragraph, the Applicant/Landlord had arranged a twice yearly inspection of the estate during which areas such as masonry, gutters, downpipes, overflows, brickwork, roofs, internal communal walls, and the general grounds were inspected. Work identified as being necessary was rated as either low, medium, or high priority, and works orders were raised accordingly. Copies of inspection sheets for the inspections carried out in January 2008 and July 2008 were attached. Those for 2009 had been requested. Also attached were paid invoices from the contractors for works identified as high priority. Any outstanding works identified as medium or low priority would be carried out within a six-month period or as cash flow allowed. The need for those works was as a result of normal wear and tear attributed to the age of the various blocks and weather. It was a ludicrous suggestion that it was due to the failure of the Applicant/Landlord. The Respondent/Leaseholder had failed to provide any particulars in that regard. The daily charges to the Respondent/Leaseholder were reasonable in all the circumstances
23. It was denied that there was any evidence of neglect. The Respondent/Leaseholder had not given sufficient particulars. The Applicant/Landlord was accordingly unable to respond properly to the

allegations

24. The provisions of clause 5a of the lease provided that the insurance policy and premium receipts needed to be provided only if requested. The Building was and had at all times been insured with Norwich Union. The Applicant/Landlord had engaged a new insurance broker who had been able to negotiate a more competitively priced policy for the estate. Any increase to the insurance premium had been as a result of the increase to the reinsurance [sic] value. The property was now insured for £300,000. The Applicant/Landlord had a duty to ensure that the property was not underinsured. The cost to the Respondent/Leaseholder was £0.44 a day. The charge was reasonable and reasonably incurred
25. The administration charges were reasonable. The Applicant/Landlord had had to spend time preparing a summary of arrears with supporting documentation which had then been sent to debt collecting agents. In addition the Applicant/Landlord relied on clause 1(f) of the sixth schedule of the lease which allowed the Applicant/Landlord to seek *all other proper and reasonable expenses (if any) incurred by the lessor in and about the maintenance and proper and convenient management and running of the Estate*
26. The service charge demands were computed and demanded in accordance with the provisions and covenants in the lease and the procedure for demanding payment. Attached were copies of the demands/invoices previously referred to, a copy of the budget estimate which accompanied the demands for 2007 and 2008, and copy accounts for the years ending 31 December 2007 and 31 December 2008
27. In view of the non-payment by the Respondent/Leaseholder, debt collection agents were instructed, namely Property Debt Collection Limited ("PDC"). Letters demanding payment of the arrears were sent to the Respondent/Leaseholder on 7 April 2008. Copies were attached. Court proceedings were then started in view of non-payment
28. Section 47 of the Landlord and Tenant Act 1987 related to the collection of rent. In any event the budget and related documents sent to the Respondent/Leaseholder contained the name address and registered office of the Applicant/Landlord

**Witness statement of Respondent/Leaseholder 30 November 2009**

29. The Respondent/Leaseholder stated that she had owned Flat 7 since May 2005. The first notification she received from Moreland Estate Management Limited that they had taken over the management from Buckingham Property Management was in January 2007 when she received a demand for money which did not explain who they were or contain a summary of leaseholder's statutory rights. She contacted the company by e-mail to find out who they were. A copy was attached
30. Mr Freilich replied that the work would be carried out by the end of January. A copy was attached
31. By March 2007 virtually nothing had been done
32. By June 2007 the block was in a terrible state of disrepair with rubbish building up, dumped



furniture, and vagrants sleeping under the carport at the west end of the building. The rubbish was causing an infestation of flies because of the heat. She was having no success contacting the management company. In desperation she contacted Environmental Health. Correspondence was attached showing that they also had difficulties contacting Mr Freilich. They were forced to threaten a Public Protection notice. Finally, with the help of Environmental Health, in early 2008 they had large Biffa bins installed which resolved the problem. Mr Freilich claimed to have sent correspondence to the residents. The Respondent/Leaseholder received no such correspondence

33. She questioned Mr Freilich's increased charges in relation to inflation. She asked for a copy of the breakdown of works. It was not forthcoming. She started receiving letters from the debt collection agency but received no correspondence from Mr Freilich. She paid £1,086.46 to Mr Freilich covering January 2007 to January 2008
34. She instructed solicitors to contact Moreland Estate Management Limited and the debt collection agency on her behalf to as signed off by a qualified accountant. She received another letter from the debt collection agency. Her solicitor found it difficult to contact Mr Freilich
35. She and the other tenants were trying to keep the block looking "liveable"
36. The Applicant/Landlord then started county court proceedings
37. In 2009 Bournemouth Borough Council were on the verge of serving a Dangerous Structure Notice. She contacted the council because of the unsafe state of the carport area of the building. The council contacted Moreland Estate Management Limited who carried out the work, but, again, not until a government agency was contacted first. Evidence was attached
38. The windows of the block had never been cleaned in contravention of the obligations in the lease. The entryphone from the communal front door to her flat neither rang nor indeed opened the door
39. Other residents wished to support her claims
40. She had attached some photographic evidence of the state of the block last year
41. She had attached a copy of the latest bill received from Moreland Estate Management Limited. She could not see how this had reached such a figure after subtracting the payment she had made last year. Mr Freilich was aware that they were in dispute but had continually added on what was called "client interest"

#### **Statement by Edward Argyle 30 November 2009**

42. Mr Argyle stated that he had lived at Flat 7 from January 2007 to September 2007. He had shared the flat with the Respondent/Leaseholder and her daughter. During that time the external windows were never cleaned and he personally never saw the communal stairwells cleaned or evidence of cleaning taking place. There was an issue with rubbish building up in the communal bin areas. Environmental Health had to be contacted as the management company did not resolve the problem when contacted by the Respondent/Leaseholder. The outside lighting never worked. There was a

guttering pipe hanging unsecured from the Building. The outside door to the communal stairwell could not be locked. The front fence was in a state of disrepair

#### **Statement by John Brown 1 December 2009**

43. Mr Brown stated that he moved into Flat 6 in January 2009. He had problems with rubbish at his end of the Building under the carport. He reported this to the management company. Nothing was done. He dealt with it himself. Because of ill-health he was at home full-time. The cleaner had been twice since he had been there. He helped her because it had not been explained to her what was needed. The other problem she encountered was that she could not gain access to the communal stairs and landing because the original cleaner had not returned the keys as he had not been paid. Mr Brown's end of the building was not secure at all. Intercoms did not work. He was responsible for contacting the council with regard to the dangerous state of the Building in order to try to get something done. They still suffered from leaking outside pipes which were not correctly connected. He and a few other residents had attended the garden and the flowerbeds through the spring and summer and dealt with their own cleaning of communal areas. They had constant problems with post going astray because the flats were not numbered correctly. Some residents had tried to rectify this themselves. When the outside security lights were not working he asked an electricity person to fix it because he was getting no help from the management company. As a group of residents they were only asking for the upkeep of the Building and garden to be attended to by the management company so that they could live in a presentable and liveable environment. However, at present they were shouldering a lot of the problems

#### **Statement by Anna Ferreira February 2009**

44. Ms Ferreira stated that she had lived at the Building since 2006. For a very long time the locks on the communal front doors did not work, and the entryphone system had never worked. This had caused security issues for her and her young daughter. She had had strangers entering the property. At the other end of the Building there were security gates which offered some level of security to residents' cars. At her end of the building, however, there was an open carport area, which had meant that there had been vandalism issues. In her time there she had seen cleaner 5 to 6 times. Her understanding was that the original cleaning company had withheld the keys because of lack of payment by the management company. They had had no car park security lights for years. The flowerbeds and garden had been tended and maintained by herself and other residents. The management company did lay some lawn, but, again, the cutting and maintenance had been dealt with by her and other residents. Clearance of rubbish from outside areas had been dealt with by residents. Lots of mail had gone astray because the flats were not correctly numbered. Residents had endeavoured to rectify the problem themselves. She was personally pursuing a claim against Moreland Estate Management Limited as she had fallen down the communal stairs because of the rubber edging not being replaced. She had suffered injuries

#### **Statement by Leanne Brown 9 March 2009**

45. Ms Brown stated that she had lived at Flat 11 for five years. During that time she had been disgusted at the lack of maintenance by the management company. The Building had sometimes gone as long as a year at a time with no visits from the company, cleaners etc. She and other neighbours had had to do it themselves. They had had to Hoover staircases and clear rubbish and

leaves from the communal entrances where the security front door had been broken for over three and a half years. They had all repeatedly asked to have them fixed but to no avail. At times this had resulted in homeless people sleeping under the stairs, using drugs and leaving their dirty needles for her then three-year-old daughter to pick up. Her landlord and she contacted Moreland Estate Management Limited about this but nothing was done. The lack of security meant that there were burglaries in the Building. The cleaning of the Building was done 2 to 3 times a year if they were lucky, until the last few weeks. The garden area had not attended to for two years. It was overgrown and full of rubbish until her neighbour, Mr Brown of Flat 6, had moved in and completely cleared the area, cut the grass, and then, with his own money, bought plants and other things to make the garden look nice. Other residents had all been tending their own flowerbeds. They also had a terrible problem with rubbish being dumped in the carport area because it was not secure. Again, Mr Brown and she cleared this on a regular basis to avoid the terrible smell it was creating. Mr Brown had made a huge difference and now they had a garden which could be used and her daughter could safely play in. However this was because of the assistance of other residents, not the management company. She had told her landlord that he was paying for no service whatsoever. For example, it had taken three and a half to four years for her intercom to be fixed and she knew for a fact that other flats in the Building still did not have a working intercom system. In the past she had been embarrassed to have visitors because of the neglect of the communal areas. She was appalled at the lack of care and interest shown by the management company

## **The substantive hearing on the 17 March 2010**

### **Preliminary matters**

46. Mr Freilich did not attend the hearing. Mr Bush said at the start of the hearing that his instructions were that Mr Freilich had been delayed and would arrive later. Mrs Combeer, Mr Argyle, Mr Brown, Ms Ferreira and Ms Brown were all present. The Tribunal indicated that it was minded to proceed in Mr Freilich's absence, but to hear Mrs Combeer and her witnesses first, not only because it would make sense to hear her case first, but also because it would then give Mr Freilich further time to attend the hearing. There were no contrary submissions
47. After the lunch break Mr Bush said that his instructions were that Mr Freilich would be arriving shortly. In fact Mr Freilich did not arrive at the hearing at all
48. Both Ms Ferreira and Ms Brown had already left the hearing venue by the time they were respectively called to give evidence
49. The Tribunal indicated that the Tribunal would take account of the fact that some witnesses had not been available for cross-examination when deciding how much weight to give to their written evidence in each case
50. Mr Brown was available to give oral evidence, but did not in fact do so because he did not move in until after the date of the last of the items listed in the statement copied at Appendix A to these reasons

51. The Tribunal asked Mrs Combeer whether she was making an application under section 20C of the 1985 Act. She said that she was. Mr Bush very fairly and properly did not oppose the making of that application orally at the hearing

## Issues

52. The parties agreed that :

- a. the matters before the Tribunal were limited to those referred to the Tribunal by the Bournemouth County Court, namely those listed in the statement copied at Appendix A to these reasons
- b. the Applicant/Landlord had now withdrawn its claims for interest and “arrears letters charges”
- c. the Tribunal had no jurisdiction to consider the claims for ground rent, which were a matter for the court
- d. the following issues remained before the Tribunal, as identified in the Respondent/Leaseholder’s defence :
  - whether the Applicant/Landlord had complied with the terms of the lease so far as the procedure for claiming the sums in issue was concerned
  - whether the Applicant/Landlord had complied with section 47 of the 1987 Act so far as that procedure was concerned
  - whether the lease entitled the Applicant/Landlord to claim administration fees and debt collection agency fees from the Respondent/Leaseholder, and, if so, whether the sums claimed were reasonable
  - whether the sums claimed in the statement copied at Appendix A to these reasons by way of service charge, namely £873.21 on the 1 January 2008 and £873.21 on the 1 January 2009, had been reasonably incurred in relation to the following items, :
    - cleaning costs
    - electricity charges
    - gardening costs
    - maintenance costs
    - management fees
    - insurance premium

## Mrs Combeer’s oral evidence

53. Mrs Combeer said that the only demands she had received from the Applicant/Landlord had been in the form of the statement copied at Appendix A to these reasons. Another example was the “application for payment” on Moreland Estate Management Limited letterheading dated the 28 November 2009 in her bundle. There had been an earlier one in similar form in relation to which she had written an e-mail to Moreland Estate Management Limited on the 16 January 2007, copied in her bundle. She could not recall specifically whether they had all been on Moreland Estate Management Limited letterheading, but she assumed so. None of the statements gave any details of how the “service charge” items mentioned had been calculated, which was why her e-mail dated the 16 January 2007 had asked for a breakdown of costs

54. She had not received a breakdown of costs until receiving Mr Freilich’s bundle in these proceedings. She had not previously seen the service charge accounts copied in that bundle. The copy accounts for the year ended the 31 December 2007 in Mr Freilich’s bundle had attached to

them a service charge expenditure statement, whereas the copy accounts for the year ended the 31 December 2008 did not. Mr Bush showed her a copy of the service charge expenditure statement which was attached to the copy 2008 accounts in his papers. Mrs Combeer said that she had never seen it before

55. She did not pay the sums demanded because she had not received the requested details. Moreland Estate Management Limited then instructed debt collectors. She sought advice. On the 6 April 2008 she wrote to Moreland Estate Management Limited sending a cheque for £1,028.46 for ground rent and service charge. In the same letter she queried the £173.21 rise in the service charge, which she said was a virtual 25% increase on the previous year, and the 40% rise in the management charges compared with those for the previous managing agents. She asked for a breakdown of the work carried out and the costs incurred
56. On the 23 April 2008 she wrote to Moreland Estate Management Limited expressing concern at not receiving a reply. She had spoken to the credit agency and they had "put the case on hold". She mentioned the Supply of Goods and Services Act 1982 with reference to lack of reasonable care and skill. She listed broken fence, electronic gates out of order for weeks, front door lock not working, car park lights not working, and no redecoration of internal staircase. The only maintenance she could see was the cutting of the small amount of grass at the back, and the hoovering of the stairs
57. After she had sent the cheque for £1,028.46 she was informed that a credit check had revealed a county court judgment against her. This was the first time she had been aware that the Applicant/Landlord had started court proceedings against her. She contacted the court. On the 2 May 2008 she received a document from the court, copied in her bundle, headed "County Court Bulk Centre", showing :
  - a. the case number as 7QT60512
  - b. the Applicant/Landlord as the plaintiff
  - c. herself as the defendant
  - d. her address as Flat 7
  - e. the "registration address" as Flat 7 Park Court, 90 [sic] Bournemouth Road, Poole, Dorset, BH14 0HA
  - f. the "particulars of claim" as :
    - service charge for the period 1 January 2007 to the 31 December 2007 amounting to £700
    - ground rent amounting to £200
    - debt collection administration fee amounting to £100
    - interest amounting to £59.57, and further interest up to the date of judgment
  - g. the date of judgment as the 21 November 2007
58. On the 10 June 2008 she wrote to Moreland Estate Management Limited saying that she had only recently become aware of the county court judgment against her. The papers had been sent to the wrong address, namely the address where she had lived whilst she was purchasing Flat 7. She had not lived there for 4 years. She asked for the judgment to be overturned
59. It was put to Mrs Combeer by Mr Bush that Mr Freilich had posted the service charge accounts, with breakdowns of costs and accountant's certificate, to Mrs Combeer at the end of October 2008, according to his statement. Mrs Combeer said that he might have posted them, but she had never received them

60. In relation to administration costs and debt collection agency fees, Mrs Combeer believed that the lease did not entitle the Applicant/Landlord to make a charge for those items. In any event, she had never seen any bills or breakdowns of costs in either respect
61. In relation to cleaning costs, Mrs Combeer said that during the whole of the 2-year period 2007 to 2008 she had seen a cleaner in Flat 7's communal stairs area only once, and a neighbour had seen a cleaner there on only one other occasion. In any event, she had seen no evidence of cleaning having been done, either. She had had to clean her communal areas herself. She had now seen the cleaning bills in the Applicant/Landlord's bundle. She could not dispute that they had been paid, but she did dispute that the work had been carried out. In any event, the size of the bills was disproportionate to the time it would have taken to clean each of the communal areas concerned, which were small, and would have taken only a few minutes in each case. Mr Freilich had suggested in his statement that cleaning was carried out monthly, whereas the invoice dated the 31 March 2007 copied in the Applicant/Landlord's bundle seemed to suggest that it was carried out weekly. The figure in that invoice (£90) did not seem to tally with the figures in other invoices, which seemed to be for £200 or £250
62. In relation to electricity charges, now that Mrs Combeer had seen the electricity bills provided by the Applicant/Landlord in the Applicant/Landlord's bundle, the amount of the bills was no longer in issue before the Tribunal
63. In relation to gardening costs, the budget for 2007, copied in the Applicant/Landlord's bundle, showed gardening costs of £1,250 and general maintenance of £2,000, whereas the service charge accounts showed no gardening item, but £2,801.53 for general repairs and maintenance. It was put to Mrs Combeer by Mr Bush that invoices copied in the Applicant/Landlord's bundle included :
- a. one from Allround Services dated the 14 February 2007 for £1,050, which included a reference to clearing the garden area of all rubbish and litter, and
  - b. one from Young & Harris Building Contractors dated the 22 September 2007 for £446.50, which included references to removing rubbish from the rear garden and car park, cutting grass in the garden area, and cutting back all overhanging plants and bushes in the rear garden area
  - c. those invoices were examples of gardening being carried out in that year, and of invoices being shown in the service charge accounts as general maintenance rather than gardening
  - d. the overall maintenance cost in the service charge account (£2,801.53) was less than the total budgeted figures for maintenance (£2,000) and gardening (£1,250)
64. Mrs Combeer said that she had not witnessed any gardening being done during the whole of the period 2007 and 2008, nor was there any evidence that any gardening had been done. The garden became very unruly and overgrown during that time
65. In relation to maintenance costs, painting was needed in the communal staircases, and there were cracks round the internal front doors to the flats. None of the outer communal doors had been lockable throughout the period 2007 and 2008. Keys did not work. Buzzers worked only intermittently. The internal releases for the outer doors did not work. The external lights at the left hand end of the car park did not work. There had been guttering issues, and the fascia of the car port

had been hanging down. The electric gates to the car park had been out of action for substantial periods during 2007 and 2008

66. In cross-examination it was put to Mrs Combeer, first, that the outer front communal doors were not part of the Applicant/Landlord's repairing covenant in the 4<sup>th</sup> schedule to the lease, because the plan of Flat 7 appeared to include the front door, and, secondly, that in any event, the issue before the Tribunal was whether service charges for work actually done had been reasonably incurred, not whether other work had not been done. Mrs Combeer accepted that the invoices from Allround Services and Young & Harris had been paid, but said that there was no evidence that any maintenance had been carried out
67. In relation to management fees, Mrs Combeer said that she had not witnessed any of the site visits mentioned in the site inspection reports
68. In cross-examination Mrs Combeer said that she could not dispute the invoices produced, or the markings on the inspection sheets, but that her case was that there had been no evidence that any of the work had actually been done. She was not saying that the invoices were a sham, or that they had not been paid, but simply that there was no evidence of the work having been done. She had made payments in accordance with the budget sheets, but had not seen the breakdowns of costs until receipt of the Applicant/Landlord's bundle
69. In relation to insurance premiums, Mrs Combeer had now seen the insurance details provided by the Applicant/Landlord in the Applicant/Landlord's bundle, and said that the amount of the premiums was no longer in issue before the Tribunal

#### **Mr Argyle's oral evidence**

70. In cross-examination Mr Argyle said that the outside lighting had not worked while he was living at Flat 7. He believed it to have been the responsibility of the Applicant/Landlord to maintain the lighting, but nothing had been done while he was living there. He had not contacted the managing agents about it because he was not the leaseholder

#### **Submissions**

71. Mrs Combeer said that the charges for gardening costs, cleaning costs, maintenance costs, and management fees were unreasonable because the Applicant/Landlord had failed to comply with its covenants under the lease to maintain the Building, and had failed, until the documents supplied in these proceedings, to provide breakdowns of costs
72. Mr Bush submitted that :
  - a. it was not admitted that the Applicant/Landlord had failed to comply with its covenants under the lease
  - b. however, and in any event, allegations of such failure were matters for the county court, not for the Tribunal
  - c. even if the Applicant/Landlord had not provided every invoice for the costs included in the service charge, the accountant's certificate in the service charge accounts was conclusive evidence that the costs had been paid

- d. the allegation that works referred to in those invoices had not been carried out was effectively an allegation that the invoices were fraudulent, which was a very serious allegation
- e. administration costs and debt collection agency fees were payable under the lease
- f. in any event, the Tribunal should make an order for costs under paragraph 10 of schedule 12 to the 2002 Act, and should not make an order under section 20C of the 1985 Act

## **The Tribunal's findings**

### **Credibility**

- 73. Having heard Mrs Combeer giving oral evidence the Tribunal finds her evidence to be straightforward, consistent with itself and with the other evidence before the Tribunal, and persuasive, and the Tribunal finds her to be a reliable and credible witness
- 74. So far as concerns Mr Freilich's evidence, on the other hand, Mr Freilich did not attend the hearing, and the Tribunal finds that his bundle of documents sent to Mrs Combeer and to the Tribunal did not contain all the documents to which Mr Bush wished to refer the Tribunal at the hearing, such as the statement of actual expenditure, certified by an accountant, for the year ended 31 December 2008
- 75. Having considered all the evidence in the round, where there is a conflict between the evidence of Mrs Combeer and the evidence of Mr Freilich, the Tribunal prefers the evidence of Mrs Combeer

### **The procedure under the lease for claiming the service charges referred to in the statement copied at Appendix A to these reasons**

- 76. The Tribunal finds that the Applicant/Landlord's case has been presented to the Tribunal on the basis that the disputed service charge items in the statement copied at Appendix A to these reasons, namely the two sums of £873.21 dated 1 January 2008 and 1 January 2009 respectively, were the Respondent/Leaseholder's proportions of the actual expenditure incurred by the Applicant/Landlord in the years 2007 and 2008 respectively, and were payable under paragraph 2(b) of the sixth scheduled to the lease
- 77. However, the Tribunal finds that :
  - a. the service charge figure of £700 dated 1 January 2007 in the statement copied at Appendix A to these reasons was one fourteenth of the budgeted figure of £9,800 shown in the projection of estimated service charge expenditure for the year ending 31 December 2007 in the Applicant/Landlord's bundle, and was accepted by the parties at the hearing as being a figure being demanded on account of service charge under paragraph 2(a) of the sixth scheduled to the lease
  - b. that figure of £700 was not put in issue in the Respondent/Leaseholder's defence dated 14 May 2009 in the county court proceedings, and was agreed at the beginning of the hearing before the Tribunal not to be in issue before the Tribunal
  - c. the service charge figure of £873.21 dated 1 January 2008 in the statement copied at Appendix A to these reasons was one fourteenth of the budgeted figure of £12,225 shown in the projection of estimated service charge expenditure for the year ending 31 December 2008 in the Applicant/Landlord's bundle, and was, contrary to the basis upon which the



Applicant/Landlord's case has been presented to the Tribunal, also a figure being demanded on account of service charge under paragraph 2(a) of the sixth schedule to the lease

- d. the service charge figure of £873.21 dated 1 January 2009 in the statement copied at Appendix A to these reasons was a figure demanded in a statement which was itself dated 12 January 2009, and before any actual expenditure figures had been produced for the year ended 31 December 2008, and accordingly that service charge figure of £873.21 was, contrary to the basis upon which the Applicant/Landlord's case has been presented to the Tribunal, also a figure being demanded on account of service charge under paragraph 2(a) of the sixth schedule to the lease, and was, as the Tribunal finds, in accordance with a budget for that year which was referred to in the Respondent/Leaseholder's defence, but which was not itself copied in the bundles before the Tribunal

78. Paragraph 2(a) of the sixth schedule to the lease provides that payments on account should be of the sum "conclusively estimated" by the Applicant/Landlord. The Tribunal finds that despite the use of the word "conclusively" it is still open to the Respondent/Leaseholder to ask the Tribunal to assess the reasonableness or otherwise of a payment on account, although it might be more difficult for the Respondent/Leaseholder to mount a successful challenge in that respect until the proposed work and costs referred to in the budget in question can be assessed
79. In relation to the allegation in the defence that the Applicant/Landlord had not properly demanded the advanced maintenance charge payments, because the Applicant/Landlord had not provided a breakdown of actual expenditure from the previous year, the Tribunal finds that there is no requirement in the lease to do so when requesting a payment on account under paragraph 2(a) of the sixth schedule to the lease, but only when demanding payment of the balance under paragraph 2(b) of the sixth schedule to the lease.

#### **Section 47 of the 1987 Act**

80. The Tribunal has taken account of, and accepts, the Respondent/Leaseholder's very fair acknowledgement at the hearing that the statement copied at Appendix A to these reasons and earlier statements might well have :
  - a. been in the same form as the statement dated 28 November 2009
  - b. been printed on the notepaper of Moreland Estate Management Limited
  - c. contained not only their address but also the name and address of the Applicant/Landlord, even though the copy statement copied at Appendix A to these reasons did not contain those details
81. The Tribunal accordingly finds that there is no basis under section 47 in this case for treating as not due the payments demanded in the statement copied at Appendix A to these reasons

#### **The service charge figure of £873.21 claimed on 1 January 2008**

82. The Tribunal finds, for reasons already given, that this sum was a claim for a payment on account of the estimated expenditure for the year 2008
83. The Tribunal also finds :

- a. again, for reasons already given, that despite the use of the word “conclusively” in paragraph 2(a) of the sixth schedule to the lease it is still open to the Respondent/Leaseholder to ask the Tribunal to assess the reasonableness or otherwise of that payment on account
- b. that there is sufficient evidence before the Tribunal from both parties to enable the Tribunal to make an assessment in that respect

84. The Tribunal’s findings in relation to each of the items confirmed by Mrs Combeer as still being in issue before the Tribunal in relation to the service charge figure of £873.21 claimed on the 1 January 2008 are as follows

85. *Cleaning £2,400*

86. In his statement at paragraph ii Mr Freilich said that the cleaning was undertaken on a monthly basis. However the Tribunal finds that the invoices in the Applicant/Landlord’s bundle indicate a weekly charge, in that the invoice dated 31 March 2007 refers to 3 separate weeks in March, the invoice of 29 June 2007 refers to a week being added, and that invoice and other invoices, apart from the invoice dated 31 March 2007, were for either £200 or £250 each. The Tribunal accordingly finds that the invoices were submitted monthly but for cleaning allegedly carried out weekly, at £50 a week. In principle, the Tribunal, drawing on its collective knowledge and expertise in these matters, finds that the sum of £50 a week would not be unreasonable for cleaning the communal areas in the Building

87. However, the Tribunal accepts Mrs Combeer’s evidence, as corroborated by Mr Argyle (in relation to his period of occupation in 2007) and Ms Brown, that there was no evidence of cleaning having been done during 2007 or 2008 and that they had had to do the hoovering themselves. The Tribunal accordingly finds that the cleaning work referred to in the invoices was not of a reasonable standard, that the costs were not reasonably incurred, and that the figure claimed on account of £2,400 was accordingly not payable by way of service charge

88. *Gardening £1,250*

89. Despite the assertion in paragraph iv of Mr Freilich’s statement that gardeners were engaged to provide gardening services monthly, and that copies of paid invoices were attached, the Tribunal finds that the bundles before the Tribunal contain no invoices relating to gardening in 2008, and only two invoices for 2007, namely Allround Services 14 February 2007 for £1,050 including an unspecified amount for clearing the garden of rubbish and litter, and Young & Harris 22 September 2007 for £446.50 including an unspecified amount for cutting the grass and cutting back. The Tribunal also notes that there is no specific item for gardening charges in the service charge expenditure statement for the period ended 31 December 2007 attached to the service charge accounts for that year

90. Having considered all the evidence actually before the Tribunal in the round, the Tribunal accepts Mrs Combeer’s evidence, as corroborated by Ms Brown and Ms Ferreira, that there was no evidence of gardening having been done during 2008 and that they had to do the gardening themselves. The Tribunal accordingly finds that any gardening work actually carried out on behalf of the Applicant/Landlord during 2008 was not of a reasonable standard, that the costs of any such

gardening were not reasonably incurred, and that the figure claimed on account of £1,250 was accordingly not payable by way of service charge

91. *General maintenance £2,000*

92. Mr Bush submitted that the service charge accounts for 2008, copied in his papers but not in the bundles sent to the Respondent/Leaseholder and the Tribunal, contained an accountant's certificate that maintenance invoices had been paid

93. However, the Tribunal finds that :

- a. the fact, if such be the case, that invoices had been paid does not of itself mean that the costs were reasonably incurred or that the work was of a reasonable standard
- b. the bundles before the Tribunal contain only one invoice relating to maintenance in 2008, namely Young & Harris 1 February 2008 for £276.12; which the Tribunal finds, having considered all the circumstances, to have been reasonably incurred for the work referred to
- c. the bundles before the Tribunal contain, contrary to Mr Feilich's assertion in paragraph v of his statement, no site inspection reports for 2008, whereas the bundles do contain site inspection reports for 2007
- d. on the other hand, the Tribunal accepts Mrs Combeer's evidence that there was little evidence of actual maintenance having been carried out during 2008

94. Having considered all the evidence actually before the Tribunal, the Tribunal finds that only the sum of £276.12 was payable in relation to the figure claimed on account of £2,000

95. *Management fees £3,150*

96. The Tribunal has taken account of the invoices from Moreland Estate Management Limited in the Applicant/Landlord's bundle, and also of Mr Bush's submission that the service charge accounts for 2008, copied in his papers but not in the bundles sent to the Respondent/Leaseholder and the Tribunal, contained an accountant's certificate that management fee invoices had been paid

97. However, the Tribunal finds, again, that the fact, if such be the case, that invoices had been paid does not of itself mean that the costs were reasonably incurred or that the work was of a reasonable standard

98. The Tribunal finds that the figure of £3,150 for 14 flats equated to £225 a flat. The Tribunal also finds, drawing on its collective knowledge and expertise in these matters, that a management fee for a block of this size in the Bournemouth area would normally be about £150 a flat a year

99. The Tribunal accepts the evidence on behalf of the Applicant/Landlord that Moreland Estate Management Limited arranged insurance, the payment of electricity bills, the payment of cleaning bills, the payment of the maintenance bill of £276.12, and an audit. However, the Tribunal also accepts Mrs Combeer's evidence that there was no evidence of cleaning or gardening having been carried out to a reasonable standard, and little evidence of maintenance

100. Having considered all the evidence in the round, and, again, drawing on the Tribunal's collective knowledge and expertise in these matters, the Tribunal finds that a reasonable figure for the work

actually done would be £100 a flat, and that therefore the sum of £1,400 was payable in relation to the figure claimed on account of £3,150

101. *Administration charge of £50 and "PDC fee" of £200*
102. In answer to a question by the Tribunal about the legal basis for the Applicant/Landlord's claim to be entitled to these items, Mr Bush submitted that :
  - a. they were payable under paragraph 1(f) of the sixth schedule to the lease
  - b. they were payable under schedule 11 of the 2002 Act
  - c. they were payable by way of costs, for which the Applicant/Landlord made a claim under paragraph 10 of schedule 12 to the 2002 Act
103. However, the Tribunal finds that :
  - a. paragraph 1(f) of the sixth schedule to the lease specifies one of the categories of items payable by a lessee and other lessees by way of service charge
  - b. it relates to the "maintenance and proper management and running of the Estate"
  - c. by their ordinary meaning, and in the context of the other provisions of the sixth schedule, those words refer to work being done in relation to maintenance of the Estate, not to work being done in relation to breach of covenant by an individual lessee
  - d. for example, the usual covenant by the Respondent/Leaseholder to pay the Applicant/Landlord's costs of a notice under section 146 of the Law of Property Act 1925 is contained in paragraph (o) of the third schedule, as a covenant by the Respondent/Leaseholder to pay those costs individually, but is not included in the sixth schedule as a category of expense which the Applicant/Landlord was entitled to include in the service charge payable by all lessees
  - e. other lessees would not expect to pay a share of a landlord's expenses in pursuing a lessee for breach of covenant under the service charge provisions in a lease unless the lease expressly so provided
  - f. the lease does not so provide, either expressly or by implication
  - g. in any event, the administration charge of £50 and the "PDC fee" of £200 were not included in the items of service charge in the statement copied at Appendix A to these reasons, but were added to that statement in manuscript as additional items
  - h. schedule 11 of the 2002 Act does not of itself entitle a landlord to claim administration charges, but merely provides that any administration charges to which the landlord is in fact entitled shall be payable only to the extent that the amount is reasonable
  - i. having considered all the evidence in the round, and in the light of the Tribunal's findings about the non-payability of substantial parts of the sums claimed by the Applicant/Landlord on account for the year 2008, the Tribunal finds that none of the circumstances set out in paragraph 10 of schedule 12 to the 2002 Act applies in this case and the Tribunal declines to make an order for costs
104. Having considered all the evidence in the round, the Tribunal finds that the neither the administration charge of £50 nor the "PDC fee" of £200 is payable

#### **The service charge figure of £873.21 claimed on 1 January 2009**

105. The Tribunal finds, for reasons already given, that this sum was a claim for a payment on account of the estimated expenditure for the year 2008

106. The Tribunal also finds :

- a. again, for reasons already given, that despite the use of the word “conclusively” in paragraph 2(a) of the sixth schedule to the lease it is still open to the Respondent/Leaseholder to ask the Tribunal to assess the reasonableness or otherwise of that payment on account
- b. however, that there is insufficient evidence before the Tribunal from either party about the actual work done and actual costs incurred to enable the Tribunal to make an assessment in that respect at this stage
- c. that if the Respondent/Leaseholder does indeed wish to ask the Tribunal to make an assessment in that respect, the Respondent/Leaseholder may well wish to do so by making a separate application to the Tribunal when the service charge accounts for 2009, with a breakdown of actual expenditure, are available

**Other items in statement copied at Appendix A to these reasons**

107. Whilst considering the papers in this case after the hearing, the Tribunal has noted that there are 2 items in the statement marked “ground rent – late payment”, one dated the 1 January 2007 and the other dated the 1 January 2008, each for £35. They are not specifically referred to in paragraph 3 of Mr Freilich’s statement, where he states that the Applicant/Landlord had withdrawn its claim for interest and “arrears letter charges”, and they were not drawn to the Tribunal’s attention at the hearing, so that the Tribunal has not heard evidence or submissions in that respect. The Tribunal is unable to make any findings about these items accordingly. However, if, as the Tribunal suspects, those items were purported administration charges for late payment of ground rent, the Tribunal would have made the same findings as those made in relation to the administration charge of £50 and the “PDC fee” of £200, namely that neither item was payable

**Section 20C**

108. The Tribunal finds that :

- a. paragraph 1(f) of the sixth schedule to the lease does not entitle the Applicant/Landlord to include the cost of these proceedings in any future service charge for the same reasons as already given in relation to the administration charge of £50 and the “PDC fee” of £200
- b. the Tribunal has not been referred to any other provision in the lease entitling the Applicant/Landlord to do so

109. The Tribunal accordingly makes an order that the costs incurred by the Applicant/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder

**Summary of payability of sums claimed in the statement copied at Appendix A to these reasons**

110. The Tribunal summarises its findings as follows :

- a. ground rent (various items) : not within Tribunal’s jurisdiction
- b. “ground rent - late payment” (2 items) : Tribunal unable to make finding, but if purported administration charges for late payment of ground rent then neither item payable
- c. 1 January 2007 service charge £700 : not in issue before Tribunal

d. 1 January 2008 service charge £873.21: £364.37 payable, being the Respondent/Leaseholder's one fourteenth share of the following items in the 2008 estimate of expenditure :

	Claimed	allowed/not in issue
• audit fees	£350	350.00
• cleaning	£2,400	0.00
• electricity	£450	450.00
• gardening	£1,250	0.00
• general maintenance	£2,000	276.12
• management fee	£3,150	1,400.00
• property insurance	£2,625	2,625.00
• total	£12,225	5,101.12

e. "client interest" (various items) : claims withdrawn by Applicant/Landlord

f. "arrears letter charge" (2 items) : claims withdrawn by Applicant/Landlord

g. 1 January 2009 service charge £873.21 : insufficient evidence at this stage to enable Tribunal to make assessment

### Reference back to the Bournemouth County Court

111. The Tribunal now refers this case back to the Bournemouth County Court

Dated the 24 March 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor

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

**Case No. CHI/00HN/LSC/2009/0142**

**Flat 7, The Sleepers, Northcote Road, Bournemouth, BH1 4SG**

**Appendix A**

**Breakdown of Applicant/Landlord's claim in the County Court**

# TENANT ACCOUNT

Combeer, Ann Harrison

Flat 7, The Sleepers, 4 Northcote Road, Bournemouth

Date	Description	Amount	Demand	Paid	Date	Due
	Suspense Balance			0.00		
01/01/2007	Ground Rent	200.00	20/01/2008 - 0345	200.00	10/04/2008	0.00
01/01/2007	Ground Rent - Late Payment A	35.00	20/01/2008 - 0345	35.00	10/04/2008	0.00
01/01/2007	Service Charge - 01/01/2007 -	700.00	20/01/2008 - 0345	700.00	10/04/2008	0.00
01/01/2008	Ground Rent	200.00	20/01/2008 - 0345			200.00
01/01/2008	Service charge	873.21	20/01/2008 - 0345			873.21
01/01/2008	Ground Rent - Late Payment A	35.00	20/01/2008 - 0345			35.00
28/11/2008	Client Interest	91.03	20/01/2008 - 0345	91.03	10/04/2008	0.00
20/01/2008	Client Interest	4.32	20/01/2008 - 0345	2.43	10/04/2008	1.89
07/03/2008	Client Interest	14.39	07/03/2008 - 0289			14.39
07/03/2008	Client Interest	10.51	07/03/2008 - 0289			10.51
29/05/2008	Client Interest	18.07	29/05/2008 - 2406/MEM/0			18.07
29/05/2008	Client Interest	13.25	29/05/2008 - 2406/MEM/0			13.25
10/09/2008	Client Interest	6.62	10/09/2008 - MEM-29-09-			6.62
10/09/2008	Client Interest	22.39	10/09/2008 - MEM-29-09-			22.39
13/10/2008	Arrears letter charge	10.00	28/11/2008 - 12/2008/ME			10.00
10/11/2008	Arrears letter charge	10.00	28/11/2008 - 12/2008/ME			10.00
28/11/2008	Client Interest	5.13	28/11/2008 - 12/2008/ME			5.13
28/11/2008	Client Interest	15.61	28/11/2008 - 12/2008/ME			15.61
01/01/2009	Ground Rent	200.00	28/11/2008 - 12/2008/ME			200.00
01/01/2009	Service charge	873.21	28/11/2008 - 12/2008/ME			873.21
<b>TOTAL £</b>		<b>3,337.74</b>		<b>1,028.46</b>		<b>2,309.28</b>

+ Admin charge 50.00  
 + PDC FEE 200.00  
 Total 2559.28