

2142

**LEASEHOLD VALUATION TRIBUNAL  
EASTERN RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 (the Act)  
Sections 20C and 27A**

**Ref:** CAM/00KF/LSC/2005/0060

**Property:** 11 Elderton Road, Westcliff-on-Sea SS0 8AG

**Applicants:**

(1)	Miss Diane Dewell	(Flat A)
(2)	Miss Susan Bridge	(Flat B)
(3)	Mr & Mrs John Bloomfield	(Flat C)

**Represented by:** In Person

**Respondent:** Regisport Limited

**Represented by:** Mr Simon Maley of Pier Management Limited  
(Managing Agents)

**Date of Hearing:** 16 March 2006

**Date of Decision:** 28 April 2006

**Tribunal:**

Mr John Hewitt	Chairman
Mr Richard Marshall	FRICS, FAAV
Mr Roger Rehahn	

**Decision of the Tribunal**

**Decision**

1. The insurance premiums payable by the respective Applicants in respect of the Property are as follows:

	<b>Flat A</b>	<b>Flat B</b>	<b>Flat C</b>
2004/5	£166.83	£163.66	£218.04
2005/6	£175.17	£263.50	£263.50

2. The respective Applicants and the Respondent shall by **4pm Friday 30 June 2006** endeavour to reconcile a cash account for each flat. Any sum due from an Applicant to the Respondent shall be paid by that Applicant within 14 days of the reconciliation. Any sum due

- from the Respondent to an Applicant shall be paid by the Respondent to that Applicant within 14 days of the reconciliation.
3. If the Parties (or some of them) are unable to agree the respective cash accounts by Friday 26 May 2006, any Party may make an application to the Tribunal for further directions so that the Tribunal will reconcile the cash account(s) and make determinations of what sums are to be paid by whom and to whom and when. Any such application for directions shall be made by **4pm Friday 7 July 2006**, shall contain a copy of the cash account claimed by the Respondent and shall identify those items in contention and explain (briefly) why. The application shall be sent simultaneously to the opposite party.
  4. No part of any costs which the Respondent may have incurred in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Applicants. An order under s20C of the Act in relation to the Respondent's costs of these proceedings shall be and is hereby made.
  5. The Respondent shall by **4pm Friday 27 May 2006** reimburse the First Applicant with the sum of £220 being the fees paid by her to the Tribunal in connection with these proceedings.

### **Background**

6. The Property is a late Victorian/Edwardian house which has, over the years been converted into self-contained flats. Flat A was converted in or about 1987. More recently, in 2004, the Respondent carried out works in the Property and flats B and C were created.
7. The Respondent is the freehold owner of the Property which is let on three long leases, with provisions material to these proceedings as follows:

#### **Flat A**

Dated: 3 July 1987

Parties: (1) Michael John Anthony Chittenden  
(2) Janet Linda Mayhead.

Term: 99 years less 3 days from 24 June 1986

Ground Rent: £50 pa for the first 33 years, £75 pa for the next 33 years and £100pa for the remainder of the term.

Demise: Ground floor flat, identified on plan attached.

Clause 3(2): A covenant on the part of the tenant, *'To pay one quarter of the costs expenses outgoings and matters mentioned in the Third Schedule'*

Clause 4(2)(a): A covenant on the part of the landlord, *'that the Landlord will at all times during the said term ...insure the Flat against loss or damage ...within the usual comprehensive policy of such insurance company as the Landlord may determine in the full reinstatement value thereof...'*

Third Schedule: Paragraph 4, *'The cost of insurance mentioned in the sub clause (2) of clause 4 and of insurance against third party risks in respect of the Building'*

The lease is now vested in the First Applicant

**Flat B**

Dated: 5 November 2004

Parties: (1) Regisport Limited  
(2) Susan Caroline Bridge

Term: 99 years from 1 July 2000

Ground Rent: £150 pa for the first 25 years of the term and thereafter subject to review in accordance with the formulae set out in the Fifth Schedule.

Further Rent: *'...on demand (a) an amount equal to the yearly sum or sums expended by the Landlord in insuring the Flat and the Landlord's fixtures and fittings therein against loss or damage by fire and against such other risks as the Landlord shall think necessary in the full reinstatement value thereof (including architects and surveyors reasonable fees demolition and site clearance and two years loss of rent) ...'*

Demise: Ground and first floor rear flat/maisonette, identified on plan attached.

Clause 2(1)(k): A covenant on the part of the tenant, *'To pay to the Landlord or its Managing Agents on demand a proper proportion of the premium in respect of the insurance of the Building'*

Clause 3(2): A covenant on the part of the tenant, *'Subject as herein before mentioned to contribute and pay a proper proportion of the costs expenses outgoings and other matters mentioned in the Third Schedule hereto and if required by the Landlord to make an advance payment or advance payments in respect of the same or on account thereof'*

The lease continues to be vested in the Second Applicant.

**Flat C**

Dated: 17 August 2004

Parties: (1) Regisport Limited  
(2) Emma Jane Moghabghab and John Anthony Bloomfield

Term: 99 years from 1 July 2000

Ground Rent: £200 pa for the first 25 years of the term and thereafter subject to review in accordance with the formulae set out in the Fifth Schedule.

Further Rent: As per Flat B above.

Demise: Second floor flat, identified on plan attached.

Clause 2(1)(k): As per Flat B above.

Clause 3(2): As per Flat B above.

The lease continues to be vested in the Third Applicants.

8. The Applicants wish to challenge the cost of insurance demanded by the Respondent's managing agents, Pier Management Limited.
9. Application has been made under s27A of the Act and there is also a related application under s20C in relation to any costs which the Respondent might incur in connection with these proceedings.
10. Directions were duly given and complied with in the main by the Applicants. The Respondent did not comply with directions, and in particular did not serve a statement of case in answer to that of the Applicants.
11. The Tribunal inspected the Property on 16 March 2006. The Applicants were present. Mr Simon Maley from Pier Management attended on behalf of the Respondent. He handed to the Applicants copies of a statement of case which he said he would wish to rely upon at the hearing if he obtained permission to serve the statement of case out of time.
12. At the hearing the Applicants attended to represent themselves. Miss Bridge was accompanied by her father, Mr Richard Bridge.

#### **The Statutory Framework**

13. The statutory framework relevant to the issues raised in these proceedings is set out in The Appendix hereto which forms part of this decision.
14. The issue for the Tribunal to determine is whether the insurance premiums are service charges within the meaning of s18 of the Act and, if so, whether they were reasonably incurred and reasonable in amount. If not reasonable in amount, only a reasonable amount is payable by the lessees.

#### **The Respondent's Case**

15. Mr Maley made an application for permission to put in a written statement of case in the form of a letter dated 13 March 2006. The letter cited two cases in support of the Respondent's approach and then commented on the alternative insurance quotations obtained by the Applicants. Mr Maley said that he had only recently been given the file. He was not able to explain why directions had not been complied with. He said that his company had recently been taken over and the offices had relocated from Southend to Basildon.
16. The Applicants objected to the statement of case being put in as it was late and the Respondent had not complied with directions. In contrast they, the Applicants, had complied with directions. The Applicants were given a short adjournment to consider the points raised in the document. The Applicants said they did not require a further time to consider the document and accepted that they would not be prejudiced if it was put in.
17. Having adjourned to consider the matter the Tribunal decided that it would permit the Respondent to put in the statement of case. The

Tribunal took into account that the Applicants said that they did not want or need an adjournment and that they were not prejudiced by the lateness of the document. Further the document was more in the nature of submissions rather than evidence.

18. The Insurance premiums claimed by the Respondent were as follows:

	Flat A	Flat B	Flat C
2004/5	£444.88	£290.09*	£387.59*
2005/6	£467.12	£467.12	£467.12

\* Apportioned for time as lease granted part way through insurance year.

Evidently, the practice of the Respondent was to take the cost of insurance of the Property and divide it equally between the three Applicants.

19. Mr Maley said that the Respondent was part of the Regis Group which had a very substantial property portfolio of some 16,000 units. Regis appointed an insurance broker to place the insurance. Mr Maley did not know what instructions had been given to the broker or what reports or recommendations were made by the broker. (The hearing was adjourned to enable Mr Maley to speak with his office to see if any report from the broker might be made available, but evidently it was not.) Mr Maley said that these were really matters for the freeholder. Mr Maley also said that there were benefits to lessees with the insurance being taken out under a block policy, but he was unable to explain what these benefits were. Mr Maley conceded that that a number of lessees across the portfolio complained about the cost of insurance.
20. Mr Maley did not know the claims history at 11 Elderton Road, or how the premium had been arrived at.
21. Mr Bridge drew attention to a certificate of insurance issued by Allianz Cornhill dated 19 October 2004 for the year 01.07.04 to 01.07.05 where the insured was Regis Group, who were the developers at that time, and where the premium for both Flats B and C was given as £144.58 plus additional premium of £101.21, a total of £245.79. In contrast the insurance certificate issued by Allianz Cornhill on 22 July 2005 for the same period, but in relation to Flat B only claimed a premium of £444.88. Mr Maley was asked for an explanation. He was unable to give it, even though he called his office to try and get clarification. Mr Maley undertook to provide a full explanation to Miss Bridge within 10 days. If this explanation has not yet been provided, we direct that it be provided by **4pm Friday 26 May 2006**.
22. Mr Bridge asked Mr Maley what 'Declared Value' meant on the Certificate of Insurance and how it was arrived at. Mr Maley did not know. He did not know if it was the building sum insured. For 2004/5 the Declared value was £104,000 and for 2005/6 it was £147,000.
23. Mr Maley said he was not aware of any commission paid by brokers or insurers to Regis. He said the sums claimed were the net cost to the

landlord. Mr Maley had nothing else to say in support of the Respondent's case that the sums claimed were reasonable in amount.

### **The Applicants Case**

24. Miss Dewell produced a report from a local broker, Jewell Pearce Davy & Co which showed that cover for Flat A., on a broadly like for like basis could be achieved at £261.79 or £272.25, and for the whole Property at £765.37 or £776.76. Miss Dewell says that these figures reflected what she had to pay for insurance on the flat she lives in and another flat she owns nearby. The Tribunal noted that these quotes reflected a premium of just under £2.40 per £1000 buildings sum insured.
25. Mr Bridge submitted a quote from Direct Line for flat B alone with a buildings sum insured of £75,000. The premium quoted was £211.05 (£2.81 per £1000 buildings sum insured). The buildings sum insured of £75,000 was advised by Miss Bridge's valuer as part of her Homebuyers Report.
26. Mr Bridge also submitted a quote from Churchill for flat B alone with a buildings sum insured of £250,000 (evidently their minimum) which gave a premium of £197.40. He also submitted a letter from local financial advisers relating to the insurance of a nearby flat in Satanita Road where the premium claimed in August 2005 was £138.31. Mr Bridge said that the building insurance on his own home came out at less than £2 per £1000 buildings sum insured.
27. Mrs Bloomfield said that they did not object to paying for insurance but did object to overpaying. Mrs Bloomfield submitted two quotes. One from Esure, buildings sum insured £100,000; premium £253.44, and Direct line, buildings sum insured £75,000; premium £211.05. Mrs Bloomfield said that these sums reflected the level of the cost of insurance on their previous flat in, Greater London. Mrs Bloomfield accepted that these estimates were a guide only and did not include for common parts.

### **Findings and Reasons**

28. It was not at issue that the cost of insurance is a service charge within the meaning on s18 of the Act. It was not in issue that it was reasonable for the Respondent to effect insurance; indeed the Respondent has a contractual obligation to do so. The main issue for the Tribunal is whether the cost of insurance claimed by the Respondent is reasonable in amount
29. The Tribunal found Mr Maley to be an honest person doing his best to assist us. Unfortunately he had only been the file a couple of days before the hearing. Moreover he was not properly equipped with the relevant detail. The landlord was required to explain how the insurance had been effected and that the approach was reasonable and the resulting cost of insurance was reasonable. It would have been helpful for a representative of the Respondent had attended the hearing to give evidence to us to explain the policy behind the renewal of insurance, produce a copy of any report issued by the brokers and to explain the decisions taken by the Respondent. Unfortunately none of

- this material was available to us. As helpful as Mr Maley tried to be, his evidence did not go to the real issues and thus really was not overly helpful to us. He was simply not equipped with the information that would have assisted us.
30. We found the evidence of Miss Dewell, Mr Bridge and Mrs Bloomfield helpful and compelling. What they said struck a chord with us and reflected the experience of the members of the Tribunal. On the basis of their evidence of cost of insurance on nearby flats, the quotations produced by them, the cost of insurance paid by the Respondent when it was the developer of the Property and the cost of Mr Bridge's home buildings insurance at less than £2 per £1000 buildings sum insured, we have no hesitation in finding that in general terms and in the absence of any explanation from the Respondent that the cost of insurance claimed by the Respondent is unreasonable in amount. We have no doubt that the Respondent, a large and successful property company with ready access to advisers, could and should have effected insurance cover at much more competitive prices.
31. We have looked carefully at the alternative quotes submitted by the Applicants. We note them but we treat them with some caution. They might not reflect like for like cover in every respect, they might have been issued as part of a marketing strategy and the premiums cited might not be repeated on renewal. They do however provide a general guide and we treat them as such. Inevitably a broad brush approach is required and we are conscious that a landlord is not necessarily obliged to insure at the cheapest level. A landlord does however have to act reasonably. If a landlord has proper and valid reasons for insuring with a particular company at a particular rate he will be regarded as having acted reasonably. In this case the Respondent has chosen not to explain to the Tribunal its strategy for insurance renewal and has chosen not to produce any evidence to support a claim that the cost incurred was reasonable in amount.
32. We have considered carefully what would be a reasonable amount for the Applicants to pay having regard to the cap imposed by s19(1) of the Act. Again we find that a general broad brush approach is the most appropriate. We do not find that the Respondent's approach to dividing the cost of insurance equally between the three Applicants to be the correct approach as it is not in accordance with the structure set out in the leases. We find the correct approach is for 25% of the cost to be attributed to Flat A (a much smaller flat) because that is the percentage specified in clause 3(2) of the lease of Flat A. The leases of Flats B and C are in common form and require a contribution of 'a proper proportion'. Flats B and C are broadly of a similar size with similar amenities. We find that a proper proportion for Flats B and C is that the remaining 75% of cost should be shared between them equally.
33. For the year 2004/5 the cost of insurance for flats B and C has to be apportioned for time. Having made the relevant adjustments, we find that the cost of insurance payable by the Applicants for the years 2004/5 and 2005/6 is as set out in paragraph 1 above.

### **The Section 20C Application**

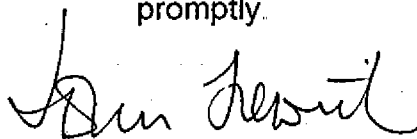
34. Mr Maley said that the Respondent had not incurred much by way of costs dealing with the proceedings, really just his time attending the inspection and the hearing. He said that he lived locally and had travelled from home. He helpfully said that the Respondent did not propose to put any costs through the service charge and thus did not oppose the making of an order under s20C of the Act. Accordingly we do make an order on the application under s20C of the Act.

### **Reimbursement of Fees**

35. The Applicants made an application for reimbursement of fees. The fees paid out total £220. The Applicants submitted that they had endeavoured to resolve matters in correspondence but could not make progress. They had hit a brick wall. They were forced to apply to the Tribunal and thus forced to incur fees. They said it would only be fair for the fees to be reimbursed to them.
36. Mr Maley did not wish to make any submissions on the application. He was content to leave it to the Tribunal. He did however ask that the landlord's decision not to claim any costs and its submission to a s20C order should be taken into account.
37. We prefer the submissions of the Applicants. We consider that it is just and equitable to make an order for fees to be reimbursed. The Respondent failed to respond to requests for information about the cost of insurance, failed to comply with directions given in these proceedings and failed to produce to the Tribunal any relevant evidence supporting the cost claimed. The Respondent has simply not condescended to be helpful at all. We note the concession made by the Respondent with regard to the s20C application, but quite frankly for the reasons given above it was very probable that a s20C order would have been made in any event.

### **Further Directions**

38. In the light of the determinations we have made, adjustments will be required to each Applicant's respective cash accounts with the Respondent. We would hope that the parties can reconcile and agree the cash accounts shortly. If not we shall do so as part of our determination of the applications under s27A. We have therefore given appropriate directions so that outstanding matters can be disposed of promptly.



John Hewitt  
Chairman  
28 April 2006



## **The Appendix**

### **Statutory Requirements**

#### **Landlord and Tenant Act 1985**

##### **Section 18: Meaning of 'service charge' and 'relevant costs'**

*'(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent:-*

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

*(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

*(3) For this purpose:-*

- (a) 'costs' includes overheads, and*
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.'*

##### **Section 19: Limitation of service charges: reasonableness**

*'(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.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

##### **Section 20C: Limitation of service charges: costs of proceedings**

*'(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*

*(2) The application shall be made:-*

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*

- (b) *in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
  - (c) *in the case of proceedings before the Lands Tribunal, to the tribunal;*
  - (d) *in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*
- (3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

**Section 27A: Liability to pay service charges: jurisdiction**

(1) *Where an amount is alleged to be payable by way of service charge, an application may be made to a leasehold valuation tribunal for a determination whether or not any amount is so payable and, if it is, as to:-*

- (a) *the person by whom it is payable,*
- (b) *the person to whom it is payable,*
- (c) *the amount which is payable,*
- (d) *the date on which it is payable, and*
- (e) *the manner in which it is payable.*

(2) *Subsection (1) applies whether or not any payment has been made.*

(3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to:-*

- (a) *the person by whom it would be payable,*
- (b) *the person to whom it would be payable,*
- (c) *the amount which would be payable,*
- (d) *the date at or by which it would be payable, and*
- (e) *the manner in which it would be payable.*

(4) *No application under subsection (1) or (3) may be made in respect of a matter which:-*

- (a) *has been agreed or admitted by the tenant,*
- (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
- (c) *has been the subject of determination by a court, or*
- (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

(5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having paid the whole or any part of an amount alleged to be payable by way of service charge.*

(6) ...

(7) ...

## **Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

### **Regulation 8: Waiver and reduction of fees**

*'(1) A person shall not be liable to pay any fee under these Regulations where on the relevant date, he or his partner is in receipt of—*

- (a) either of the following benefits under Part 7 of the Social Security Contributions and Benefits Act 1992
  - (i) income support; or*
  - (ii) housing benefit;**
- (b) an income –based jobseeker's allowance within the meaning of section 1 of the Jobseekers Act 1995;*
- (c) a tax credit to which paragraph 2 applies;*
- (d) guarantee credit under the State Pensions Credit Act 2002; or*
- (e) a certificate—
  - (i) which has been issued under the Funding Code and which has not been revoked or discharged; and*
  - (ii) which is in respect of the proceedings before the tribunal the whole or part of which have been transferred from the county court for determination by a tribunal.'**

### **Regulation 9: Reimbursement of fees**

*'(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.*

*(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).'*