

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

**CASE No: CHI/43UF/LIS/2005/0052**

**BETWEEN :-**

**MR & MRS HARJINDER DYAL SINGH BANSEL**

**APPLICANT**

**AND**

**NUFFIELD HEALTH CARE LTD**

**RESPONDENT**

**PREMISES:-**

**14 BRAMBLE CLOSE  
OAKLANDS PARK  
REDHILL  
SURREY  
RH1 6RU  
("THE PREMISES")**

**TRIBUNAL:- MR D. AGNEW LLB LLM (CHAIRMAN)  
MR R. A. WILKEY FRICS FICPD  
MS J. DALAL**

**HEARING:- 13<sup>TH</sup> MARCH 2007**

---

**DETERMINATION AND REASONS**

---

**1. THE APPLICATION**

- 1.1 On 18<sup>th</sup> October 2005 the Applicant made an application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 for a determination as to the reasonableness of service charges in respect of the premises for the years 1999-2004.
- 1.2 Four other long leaseholders on the Oaklands Park Estate were joined as Applicants but over time they have either, sadly, died or have withdrawn as Applicants leaving Mr and Mrs Bansel as the only remaining Applicants.
- 1.3 The background to this Application was set out extensively at paragraph 1.1 of the Tribunal's reasons given in respect of a preliminary hearing on 10<sup>th</sup> August 2006 which should be read in conjunction with these reasons.
- 1.4 Attempts to narrow the issues between the parties had come to nought and these remained:-
  - a) The cost of the provision of nursing care for the residents of Oaklands Park Estate
  - b) Administration fees

- c) Maintenance charges
- d) Depreciation
- e) Legal and professional fees
- f) Insurance costs
- g) Bad debts
- h) The appointment of the cost of water, light and power
- i) Other sundry items of expenditure

1.5 At the hearing on 10<sup>th</sup> August 2006 it was stated that the Respondent company had ceased trading and could be dissolved at any moment. Subsequent to that hearing the Respondent's solicitors wrote to the Tribunal to say that the Respondent would take no further part in the case as it did not have the funds necessary to do so. Consequently, Mr Bansel, who was no longer instructing solicitors and counsel, appeared in person and was unopposed at the hearing. Mr Kevin Barr from Peveral Management Services who have taken over from Nuffield Healthcare Ltd was in attendance as an Observer.

1.6 The hearing took place at The Harlequin Centre, Redhill on 13<sup>th</sup> March 2007.

## 2. THE APPLICANT'S CASE

2.1 The Applicant explained that he had been hampered in presenting his case by the fact that the Respondent had failed to disclose documents in breach of the Tribunal's directions. He produced a copy of a report from Stirling-Milne LLP, Chartered Accountants instructed by him who had been given access to some but not all relevant documents for the years 2003 and 2004. The Respondent had claimed at earlier hearings that they had disclosed all the documents that they had. When they transferred the freehold in 2004 the documents and records had been passed to the new freeholders. Some documents had been retrieved after those proceedings had been commenced, but not all. Mr Bansel did not accept this. He maintained that according to the new freeholders all the documents and records relating to the Care Centre had been returned to the Respondents. Whatever the true situation, the lack of documentation was unhelpful to the Applicant and also to the Tribunal.

### 2.2 24 HOUR NURSING CARE

2.2.1 Mr Bansel's case was that the provision of 24 hour nursing care as purportedly provided by the Respondents, was an expensive and unnecessary service and was not as satisfactory as the current system which is cheaper and of better quality.

2.2.2 Under the Respondent's scheme a trained nurse was supposed to be available at the Care Centre to be called out to attend to anyone on the estate who required their services at any time of the night or day. It was Mr Bansel's evidence, however, that more often than not, it was an orderly or care assistant who would attend if called out and they would assess whether or not an ambulance was required. This meant that there would be delays in summoning

ambulances. Further, these personnel did not carry any first aid bags or equipment, so could not have given much assistance when they attended. The current system is that if a call is made it goes to a call centre, they assess what provision is necessary and call an ambulance if required. This has meant according to Mr Bansel that the ambulance arrives much quicker than under the former system. Mr Bansel had experienced this personally when he has had occasion to summon assistance for his wife both with the current system and previously when provided by the Respondent.

2.2.3 Mr Bansel said that at every AGM the residents would complain about the cost of the 24 hour nursing care but they were told that that was what they were providing and that the residents just had to accept it. They were not told about any other system, such as the one that now operates. He did not make any enquiries because he did not know about alternative schemes.

2.2.4 The cost of the current system which the new freeholders through their managing agent, Peverel, investigated as soon as they took over in 2004 is a fraction of the cost of the Respondent's system. According to a letter from the Respondent's solicitors to the Applicant's solicitors dated 27<sup>th</sup> April 2006 the Respondent needed the services of 4.5 nurses at a gross cost of £30,000 per annum per nurse. The Respondents were charging the residents of the estate 50% of that cost recognising the fact that when the nurse on duty was not on call for the residents of the estate he or she would be able to carry out duties in the Care Centre. The Accounts showed that the cost of nursing care charged to the residents for the years 1999-2004 were as follows:-

1999 -	£46,200
2000 -	£48,000
2001 -	£50,500
2002 -	£53,000
2003 -	£55,120
2004 -	£57,324

Under the new arrangement with the current Landlord the cost of emergency nursing care was £12,075 for 2006 the first full year under this service. The Applicant says that this shows that the Respondent's charges for emergency nursing care were excessive. The Applicants state that there were about 150 emergency call outs per year, or one every other day approximately. It did not require extra nurses employed 24 hours a day 365 days per year to service this need and in any event the Respondent had provided no evidence to show that additional nurses were in fact employed.

### 2.3 ADMINISTRATION & MANAGEMENT FEES

2.3.1 The Applicant said that the Estate Management costs under the Respondent were high for what was provided. The actual costs were:-

	Administration	Management	Total
1999	£22,426	£14,700	£37,126

2000	£23,133	£15,300	£38,433
2001	£24,487	£16,000	£40,487
2002	£25,942	£16,800	£42,742
2003	£24,752	£17,472	£42,224
2004	£22,740	£18,171	£40,911

(part year)

In contrast the current Administration and Management fees are £34,000 for 2006 and are budgeted at £35,045 for 2007. Mr Bansel said that the current management was much better and more transparent under the current regime compared with that under the Respondents. They now have proper budgets for planned expenditure which never happened previously. Management is said to be more accessible. There is still a manager on site as was the case under the Respondents.

## 2.4 MAINTAINENCE CHARGES

2.4.1 Mr Bansel complained that the Respondents had never produced any invoices for repairs or maintenance and it was not known what percentage of the total costs for the care home and the estate was being charged to the estate. The Respondents employed two people to carry out maintenance. One a handyman, who, it was said, spent most of his time working for the care centre. It was pointed out to Mr Bansel by the Tribunal that his own Accountant, whilst ideally wanting further information seemed to indicate in his report that the maintenance charges for 2003 and 2004, were properly charged. Mr Bansel said that he could not add anything to what was in his Accountant's report.

2.4.2 The amounts charged for maintenance were:-

1999 -	£37,749
2000 -	£38,650
2001 -	£70,704
2002 -	£65,238
2003 -	£71,088
2004 -	£71,677

2.4.3 The current maintenance charges are approximately £18,000 for 2006 and an estimated £15,300 for 2007 but with a contribution of £27,000 to a Redecoration fund and £19,775 to a contingency fund.

2.4.4 Mr Bansel's Accountant concluded that for 2004 "the valuation [of the maintenance costs under a long-term redecoration and repair plan] itself seems reasonable and all the work charged for thereon appears to relate to the Estate, not the Care Home". Work was however done on the Care Home at this time and so the Accountant could not be sure that Care Home maintenance work had not been charged to the Estate. As far as other maintenance charges were concerned, Mr Bansel's Accountant stated in his report that "We consider there can be little argument with the balance of the maintenance charges. All items of expenditure are invoiced".

## 2.5 GARDENING

2.5.1 Mr Bansel said that the Estate residents had been charged for 100% of the gardener's cost although the gardener himself had told him that he spent 60-80 hours per month tending to the gardens around the Care Centre. The amounts charged by the Respondents for gardening are as follows:-

1999 -	£28,833
2000 -	£27,403
2001 -	£25,408
2002 -	£26,759
2003 -	£27,236
2004 -	£32,820

2.5.2 The current cost to the Estate for gardening is £26,500. The standard of gardening is much the same now as it was under the Respondents.

2.5.3 The Respondents were willing at a meeting in January 2005 to give a total credit for the six years in question of £8,538.20 in respect of gardening fees.

## 2.6 LIGHT & WATER

2.6.1 Mr Bansel accepted that there was not much difference in the situation between now and that under the Respondent. However, a refund of a total of £4,242.55 for the six years in question had been offered by the Respondent in January 2005.

## 2.7 WINDOW CLEANING

2.7.1 There was no challenge to this item.

## 2.8 TRANSPORT

2.8.1 There was no challenge to this item.

## 2.9 DEPRECIATION

2.9.1 Mr Bansel said that he has asked for a list of assets on which a valuation had been placed in order to ascertain whether or not the time for depreciation was reasonable but no such list had been produced by the Respondents. He was therefore not in any position to judge whether or not this charge was reasonable.

## 2.10 LEGAL FEES

2.10.1 Mr Bansel could not postulate as to what legal fees might have been properly incurred by the Landlord and charged to the Estate. The Respondents had provided little information as to how this cost had been incurred.

## 2.11 INSURANCE

2.11.1 This was an item which Mr Bansel had raised at the Management Company's AGMs. He had produced a quotation showing that insurance could be arranged for a premium of approximately £6,500 whereas the charge for insurance premium under the Respondents was as follows:-

1999 -	£8,500
2000 -	£8,800
2001 -	£9,073
2002 -	£9,500
2003 -	£9,000
2004 -	£6,625

Mr Bansel pointed out that once he had produced his quotation the cost of the insurance premium reduced dramatically to a figure very similar to the one he produced.

2.11.2 Mr Bansel also pointed out that according to the Accounts in 2003 and 2004 the cost of insurance was £10,302 and £15,260 respectively whereas in fact these figures included sums of £1,302 and £8,135 respectively for insurance claims. There is however no entry showing the receipt of any insurance monies from claims in the Accounts.

## 2.12 BAD DEBTS

2.12.1 In 1999 and 2000 sums of £512 and £543 were charged to the Estate in respect of "bad debts". Mr Bansel did not know what these were but in any event they should not be charged to the Estate.

## 2.13 BANK CHARGES

2.13.1 There was no challenge to this item.

## 2.14 STATIONERY & PHOTOCOPYING

2.14.1 £2,410 had been charged to the Estate in 2003 and £2,998 in 2004. Mr Bansel said that this was excessive. He said all that was provided to the Estate residents was a 2-3 page monthly newsletter and annual accounts of 8-10 pages. This should only cost £200-£300. Peverel do not charge for this – it is included in their management fee.

2.15 At a meeting on 2<sup>nd</sup> February 2005 the Respondent agreed to give the Estate residents a credit for certain items, some of which have been mentioned above. This credit totalled £67,013. The Respondents say the Estate residents have never seen any refunds nor have their service charge accounts been credited. Mr Barr of Peverel, who was at the hearing principally as an observer was able to say that as far as he could see no such credit had been given. The sum of money handed over to Peverel from the Respondents at the time of the

change to the new freeholder simply corresponded to the surplus of service charges which had not been used up by that stage in the service charge year at the handover and the opening and closing balances match. As the change of the freeholder took place in the same month as the meeting agreeing to the credit and as no money for this credit had been received by Peverel and no amended service charge statements issued it was difficult to see how the alleged credit is supposed to have been effected.

### 3. THE RESPONDENT'S CASE

3.1 As the Respondents did not appear nor were represented at the hearing the Respondent's case was gleaned from the skeleton argument produced by its Counsel for a previous hearing, a letter dated 16<sup>th</sup> December 2002 from Nuffield Care Centre to Mr Bansel's Accountant and notes of the meeting referred to above on 14<sup>th</sup> January 2005 attended by the Applicant, his solicitor, the solicitor for Nuffield Hospitals and the Operations Manager and General Manager of the Respondent.

3.2 The Respondent's case in respect of each disputed item of expenditure is as follows:-

3.2.1 Emergency nursing cover.

- (i) The lease provides that the Respondent "may from time to time during the Term if it in its sole discretion thinks fit supply and carry out any or all of the Additional services set out in Part 11 of the Second Schedule". This Schedule states that the Additional services the Respondent may provide are those which "in the reasonable opinion of the Respondent it is reasonable to provide or carry out in the general interest of the Lessees" and "consistent with the maintenance ..... as a high class residential community". Thus, the Respondent says, it was entitled to provide emergency nursing cover in the form provided.
- (ii) Quotations as to the cost of this service were raised at AGM's, the Accounts approved and a resolution passed that the arrangement should continue.
- (iii) The Respondent sent round a questionnaire asking the Estate residents to vote on the level of service provided. 81 responses were received. 78 of these said that the service was important for them and 72 said they wanted the system to remain as it was. 69 said they did not want an outside call centre if it were cheaper. The Estate residents, it was said, were now estopped from complaining that this was the system employed by the Respondent.
- (iv) There were advantages to the Estate residents of having the facilities of the Care Centre on their doorstep. Trained nurses were available to attend within minutes. The staff had access to the residents' medical history and contact details for next of kin. Residents could have dressings changed there and injections. The cost per property was only £1.36 per day which was very reasonable.

- (v) All the Estate residents had purchased their properties in the knowledge that this was the system operating at Oaklands Park and they were given literature explaining this and the cost.
- (vi) The presence of the care centre and the emergency nursing cover provided peace of mind to the elderly residents and their relatives who knew that this facility was available should their relative have need of it.

### 3.2.2 Management and Administration.

- (i) The apportionment of the Manager's salary had been agreed in the early to mid 1990's on the basis of time spent. Although the proportion of time spent on the Estate residents had, it was claimed, increased since then, the percentage contribution from them had not increased.
- (ii) Administration costs included invoicing, billing, credit control, banking and reception cover. The receptionist carried out many tasks for the Estate residents' benefit. Further, Matron dealt with the nurses' roster, supervised the nurses, dealt with training, kept records up to date and was the contact for the coroner. The Finance Manager dealt with monthly accounts, checked and paid invoices for the Estate, attended residents meetings, prepared Accounts. It was said that, all in all, the charges for this service were reasonable.

### 3.2.3 Repairs and maintenance

All Accounts have been audited and also approved by the Resident's Association Committee and by the residents generally at AGM's. It was said that a planned maintenance report had been prepared for the said Committee and details of costs provided. Bills were charged and apportioned on the basis of work done.

### 3.2.4 Gardening

A credit was agreed in respect of this.

### 3.2.5 Insurance

- (i) The premium was negotiated every year under Nuffield Hospitals' block insurance policy. Accounts have been audited and expenditure approved at AGM's.
- (ii) Just because a premium goes down in one year does not mean that premiums for previous years were too high. The market varies.

### 3.2.6 Other items

The Respondent said that it was unable to respond further to other items as it did not consider that the challenges to the various items of expenditure had been sufficiently particularised.

## 4. THE LAW

- 4.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable
- (e) the manner in which it is payable.

4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

4.3 The consultation provisions are contained in The Service Charges (Consultation Requirements) (England) Regulations 2003. These are detailed and comprehensive and it is not proposed to reproduce them in these reasons.

4.4 By Paragraph 2 of Schedule 11 of CLARA "a variable administration charge is payable only to the extent that the amount of the charge is reasonable."

4.5 Paragraph 5 of the 11<sup>th</sup> Schedule gives jurisdiction to the Leasehold Valuation Tribunal to determine the reasonableness of administration charges in the same way as for service charges under Section 27A of the 1985 Act.

## 5. THE LEASE

5.1 By clause 3(b) of the Lease the Service Company (Nuffield Health Care Limited) covenanted with the lessee to perform and observe each of the obligations... set out in Part I of the Second Schedule thereto.

5.2 By Part I of the Second Schedule the obligations of the Service Company are set out. These include:

- (i) to maintain, repair, decorate cleanse and renew the main structure of the building in which the Property forms part and other building comprising bungalows, cottages, flats and garages on the estate, the private access ways, communal parking areas,

and garden areas of the estate and to keep the garden areas cultivated, neat, and tidy and in good condition.

- (ii) to maintain the administrator alarm telephone system and security systems.
- (iii) to pay rates and water rates etc.
- (iv) to insure the Property and other buildings on the estate.
- (v) to clean windows of the properties in the estate.

5.3 By Clause 3(c) of the lease the Service Company covenanted with the lessee to supply and carry out such (if any) additional services set out in Part II of the Second Schedule "as the Service Company in its sole discretion may from time to time think fit".

5.4 By part II of the Second Schedule the Additional Services are stated to include:-  
"such other services and facilities... which in the reasonable opinion of the Service Company it is reasonable to provide or carry out in the general interest of the lessee..."

5.5 By Clause 5(a) of the lease, the lessee covenanted to "pay all the amounts expressed... to be payable in respect of... the Service Charge.

5.6 By Clause 2 of the Lease the lessee covenanted to pay "secondly by way of a further or additional rent a service charge of an amount which is to be determined in the manner provided by the Third Schedule..."

5.7 By Clause 5(c) of the lease the lessee further covenanted that the Service Company "may from time to time during the term as the Service Company in its sole discretion thinks fit supply and carry out any or all of the Additional Services set out in Part II of the Second Schedule.

## 6. THE DETERMINATION

6.1 As previously stated the Tribunal was considerably hampered in its task by the lack of documentation and information from the Respondent and its non-attendance at the hearing. Whether the Respondent's failure to produce evidence was suspicious and deliberate, as the Applicant suggested, or whether it was genuinely unable to assist, the Tribunal was unable to assess.

6.2 The Tribunal's approach to the case was to say that if the Applicant had raised a prima facie case that a challenge to a particular item was justified then the burden of proof that the expenditure was reasonable, on a balance of probabilities would rest upon the Respondent. If the Respondent was unable to discharge that burden of proof due to lack of documentation then that was unfortunate but the Tribunal considered that it was incumbent upon the Respondent to retain records for at least six years or, if it had disposed of its interest in the

property (as in this case) ensure that the transferee retained those records and make them available in just such circumstances as has arisen in this case.

6.3 The Tribunal's decision in respect of each disputed service charge item was as follows:-

#### 6.3.1 Emergency Nursing Care

- (i) The Tribunal noted that the cost of the current system of having an emergency line to a call centre which would assess and organise an appropriate medical response is significantly cheaper than the system operated by the Respondents. This did not necessarily mean, however, that the Respondents' system was unreasonable or unreasonably expensive. The cost of the two systems could not be directly compared because they offered a different service. Mr Bansel considered that the current system was better than the Respondents' system and he had had experience of having to use both. He did not, however, call any other lessee to support that evidence and for all the Tribunal knows, he might be the only lessee or Estate resident who thought that way. The Tribunal is mindful of the results of the questionnaire referred to in paragraph 3.2.1 (iii) above. Whilst the Tribunal views that questionnaire with some caution in view of the terms in which the questions were framed and the limited information as to alternative schemes which were available to residents at the time the questions were asked, nevertheless it appears that the majority of residents, whilst concerned at the cost of the service, did value it and seemed to want it to continue. It was the scheme which was in operation when they bought their properties and they would have been aware of the costs of the service in the years prior to their purchase. It did offer more than the current scheme, even though on occasions it may not have been a trained nurse who immediately answered a call. The current scheme may be perfectly adequate for what it does provide. The Tribunal is prepared to accept however that the scheme that the Respondents provided, whilst not the most economic, was a reasonable scheme in all the circumstances of the case from 1999 to 2004.
- (ii) The next question is whether the costs of providing that service were reasonable and whether they were reasonably apportioned between the Care Centre and the Estate residents. In this respect, although the Tribunal only has jurisdiction to determine the reasonableness of service charges of the leaseholders on the Oaklands Park Estate, as the freeholders pay a rent charge on the same basis as the leaseholders pay service charges, the same considerations apply to both. The Tribunal cannot, however, provide any assistance to the freeholders in determining any dispute they may have with the Respondents to whom they previously paid their rent charge.

- (iii) The Tribunal considered that in order to have a nurse available at any time of the day or night to deal with calls from Estate residents it would have required the employment of 3.5 nurses to cover sickness and holidays as well as 24 hour duty. This would be so even though there was not any certainty that a nurse would be needed at any particular time. Although that nurse would be able to attend to other matters at the Care Centre he/she would have to be in a position to drop everything, stop what they were doing and answer an Estate resident's call. The Tribunal, although not having any expertise or specialist knowledge in the field of employment of nursing staff found the Respondent's figures for the costs of employing 3.5 nurses to be credible and therefore the Respondent's expenditure on such a number of nurses was found to be reasonable.
- (iv) The Tribunal found doing the best it could on the information available that a reasonable apportionment of the cost of the emergency care would be 40% to the Estate and 60% to the Care Centre. In 2004 the Respondent's figure for the total cost of emergency nursing cover was £118,000.00. 40% of this figure would be £46,000.00. We do not have figures for previous years for total emergency nursing costs but it would be reasonable to assume that they rose steadily from 1999 to 2004. Reducing the emergency nursing costs pro rata for the years prior to 2004 produces the following figures:-

		Charged	Overpaid
1999	£38,103.00	£46,200.00	£8,097.00
2000	£39,587.00	£48,000.00	£8,413.00
2001	£41,649.00	£50,500.00	£8,851.00
2002	£43,711.00	£53,000.00	£9,289.00
2003	£45,459.00	£55,210.00	£9,661.00
2004	£46,000.00	£57,324.00	£11,324.00

This produces a total overpayment of £55,635 which has to be shared between the 14 leasehold flats and the 99 freehold houses. The Applicant's share of this overpayment is therefore £492.35, assuming he has been in residence at the Premises since 1999.

### 6.3.2 Management and Administration fees

- (i) The highest management fees were charged by the Respondent at £160.00 per unit in 2004. From its own knowledge and experience the Tribunal considered this to be a reasonable charge. Consequently the tribunal found all the management charges from 1999 to be reasonable.

- (ii) The Applicant had raised a query as to whether the Respondent was able to reclaim VAT and consequentially whether the residents should not have to pay VAT on the costs. There is however a note to the Accounts, signed by the Auditors, Grant Thornton, that the scheme could not recover VAT from H M Customs & Excise. Thus, the Tribunal was satisfied that VAT was properly charged to the Estate residents.
- (iii) As for Administration fees, although these were higher under the Respondent's regime than is currently the case the Tribunal did not consider this surprising when the Respondents were also providing some service from a matron and a receptionist which is no longer the case. In the circumstance the Tribunal did not consider the Administration fees to be unreasonable.

#### 6.3.3 Street lighting and Water

- (i) The Tribunal considered that the amounts charged to the Estate residents was much in line with what is currently being charge under the new freeholders.
- (ii) Further in the 2004 Accounts there has evidently been shown as income a figure of over £4,000.00 which is explained in a footnote as comprising a 25% refund of charges made by the landlord over the past 6 years. Thus, an adjustment to these charges has already been effected.

#### 6.3.4 Depreciation

The fixed (tangible) assets are given in each year's Accounts and the depreciation figure is no doubt based on those values. The Tribunal was prepared to accept that as the accounts had been audited by a reputable firm of Chartered Accountants the depreciation figure was an appropriate one in the circumstances.

#### 6.3.5 Bad debts

The Tribunal could understand no justification as to why the Estate residents should have been charged for the Company's bad debts. These would be disallowed. They total £1,055.00 and relate to 1999 to 2000 only. If Mr Bansel was an owner in 1999 and 2000 his share of the refund due in respect of this item is £9.34.

#### 6.3.6 Legal fees

The Tribunal could find no justification from the Respondent for charging such fees. An explanation of the sort of matters that the Respondent's solicitor was engaged in leading to these fees (i.e. in the notes of the meeting held on 14<sup>th</sup> January 2005) failed to convince the Tribunal that these were not matters which should have come within the management fees. Consequently the Tribunal disallows all the legal fees charged which in total for 1999-2004 came to £4,050.00, Mr Bansel's share of which (again assuming he has been a leaseholder in Oaklands Park since 1999) is £35.84.

6.3.7 As there was no challenge to Bank charges, Audit fees, transport or window cleaning it is not necessary for the Tribunal to make any determination in respect thereof.

#### 6.3.8 Gardening

The standard of gardening was regarded as being reasonable under the Respondents management. The amount charged is much the same under the current freeholder as it was under the Respondent. The Tribunal considers therefore that the gardening charges are reasonable.

#### 6.3.9 Maintenance costs

The only detailed information available is for 2004. These figures would tend to suggest that the works done did not come within the ambit of works requiring the consultation procedure of Section 20(ZA) of the 1985 Act as amended by CLARA. The Applicant's Accountant, in his report of June 2006 had looked at these costs for 2004 in detail and concluded that the charges made were in respect of work carried out to the Estate as opposed to the Care Centre, as far as he could tell, and that the value appeared to be right. This was for the major rolling programme of maintenance work. Other items were accounted for by invoice and appeared to be in order. Whilst there was no detailed information for previous years the Tribunal considered that they were in line with the figures for 2004. Consequently the Tribunal would allow as reasonable the maintenance charges made by the Respondent from 1999-2004.

#### 6.3.10 Insurance

(i) The Tribunal accepted that Mr Bansel had reason to be suspicious that when he produce a quotation for insurance that was cheaper than had previously been charged the Landlord's own insurance premium fell to a very similar figure. However,

the Applicant was not able to furnish sufficient evidence to the Tribunal in the form of like for like comparable quotations taking into account claims record for the years in question to enable the Tribunal to conclude that the amount charged by the Respondent for insurance had been unreasonable.

- (ii) The current figure for insurance under the present freeholder is considerably higher than it was under the Respondent's regime.
- (iii) Accordingly the Tribunal considered that the insurance premiums charged to the Estate residents was reasonable.

#### 6.3.11 Photocopying

The charges for 2003 and 2004 seemed to the Tribunal to be high for the amount of copying required. Again doing the best it could on the scant information available the Tribunal considered that £1,000.00 for each of those years for this item would be reasonable. The total amount overcharged for those years was therefore £2,408.00, Mr Bansel's share of the overpayment being £30.16 charged for those years was £5,408.00 making Mr Bansel's share to be £416.00.

#### 6.3.12 Agreed refund

At a meeting on 14<sup>th</sup> January 2005 the Respondent agreed to credit the Estate residents with a total of £10,819.00 in respect of a miscellany of service charge items which have not been disallowed above. There is no evidence that this refund or credit was ever actually made. No money were reserved from the Respondents by the Estate residents and no service charge demands were ever amended prior to the freehold being transferred by the Respondent. As this was something which was agreed by the respondent the Tribunal decided that this was a further unreasonable amount for the Respondent to have charged the residents and that this should be refunded to them.

### 7. SUMMARY OF OVERPAYMENTS

- (i) The Tribunal therefore finds that the following service charge items were unreasonably demanded by the respondent in respect of the service charge years 1999-2004:-

The agreed refund	£10,819.00
Photocopying and stationery	£3,408.00

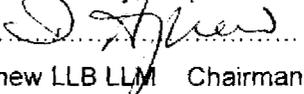
Legal fees	£4,050.00
Bad debts	£1,055.00
Emergency nursing cover	<u>£55,635.00</u>
	£74,967.00

- (ii) This Tribunal only has jurisdiction to make a determination in respect of Mr Bansel's service charge, and as has been stated above this decision has little or no direct benefit to the freehold owners of the Estate who pay a rent charge. Assuming Mr Basel has been a leasehold owner at Oaklands Park since 1999 and has paid the service charges as demanded, his share of an entitlement to a refund from the Respondent on the above figures will be £663.42.
- (iii) The Tribunal realises that this will be scant reward for Mr Bansel's hard work and perseverance in bringing this matter to a hearing and it has been very costly to him in terms of legal fees. No doubt he undertook this action, not only for his own benefit, but for the greater good of his fellow leaseholders and indirectly the freeholders. It is even more ironic that due to the Respondent ceasing trading its only asset was, at the time of the hearing, a £70,000.00 retention from the sale proceeds of the freehold. This may now have slipped beyond the reach of the Applicant leaving him with the uphill battle of trying to persuade a Court that Nuffield Hospitals and not just Nuffield Health Care Limited are responsible for paying the refund identified in this determination.

## 8. SECTION 20 C APPLICATION

- 8.1 The Applicant made an application under Section 20C of the 1985 Act to the effect that the cost of the Tribunal proceedings should not be added to any future service charge demands.
- 8.2 The Tribunal considered that in view of the substantial amount that the Respondent has been found to have charged unreasonably by way of service charges it was right and proper for the Applicant to have made this application under Section 27A of the 1985 Act. He has conducted himself properly in the proceedings seeking to narrow issues where possible. In all the circumstances the Tribunal considered that an order under Section 20C of the Act should be made and that the Landlord will not be able to add the cost of the Tribunal procedure to any future service charge demands.

Dated this 4<sup>th</sup> day of April 2007

  
 D. Agnew LLB LLM Chairman