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**Eastern Rent Assessment Panel**
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**Residential Property**
**TRIBUNAL SERVICE**

# REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL

**Landlord & Tenant Act 1985 Sections 27A and 20C**

| | |
|---|---|
| **Premises:** | 175B Histon Road, Cambridge CB4 3HL |
| **Our ref:** | CAM/12UB/LSC/2010/0001 |
| **Hearing:** | 29 June 2010 |
| **Applicants:** | Mr Nicholas Marshall |
| **Respondent:** | The Co-operative Group |
| **Represented by:** | Mr Paul Heptinstall (Residential Property Manager) |
| **Managing Agents:** | Ms Sarah Humm (Touchstone CPS Ltd) |
| **Members of Tribunal:** | Mr G M Jones - Chairman<br>Mr R Brown FRICS<br>Mr P A Tunley |

## ORDER

UPON HEARING the Applicant in person and the Respondent through its Residential Property Manager and Managing Agents

IT IS ORDERED THAT:

1. The insurance service charges for Flat 175B Histon Road, Cambridge are assessed in the sum of £131 for 2008 £136 for 2009 and £140 for 2010.

2. The solicitors costs incurred in relation to case number 9BT01840 were not reasonably incurred and shall not form part of any service charge account for Flats 175A or 175B Histon Road Cambridge.

3. The Respondent may not include any costs incurred in connection with this Application in any service charge account for the said flats or either of them.

4. This Application is hereby re-transferred to the Cambridge County Court under case reference 9BT01840'

**Geraint M Jones MA LLM (Cantab)**
**Chairman**
**10 August 2010**

## 0. BACKGROUND

### The Property

0.1 The subject property is a fair-sized one bedroom flat, one of a pair built on top of the Co-operative Supermarket in Histon Road, which is the largest unit in a small parade of local shops. The other flat (175A) is a somewhat smaller studio apartment, occupied by the tenant Ms Lucy Jakubowska and her family. The flats are of light-weight construction with a concrete tiled pitched roof. The roof is supported by three nine-inch brick walls comprising the flank walls of the building and a wall dividing the flats. The front and rear walls are timber-framed with some form of cladding on the outside, probably plaster board on the inside and insulation between. These walls are not much more than 15 cm thick. The windows are timber-framed and single-glazed. Each flat has a balcony facing the road, reached by double-glazed patio doors, and a dedicated area of paved roof-space at the rear. These are small low cost flats in a not particularly attractive location.

0.2 The original shop appears to date from the 1960's; but the flats are clearly of more recent construction, probably built early in 1990. There is also a rear extension to the shop premises which is single storey apart from the loading bay at the rear, which has a plant room at first floor level. This extension approximately doubles the footprint of the building. The valuer Member of the Tribunal paced out the areas; but the precise areas do not matter, for reasons that will become apparent. The lease plans (as to which, see below) suggest that the rear extension may have been added at the same time as the flats, a point to which it will be necessary to return.

0.3 The flats themselves cover about 40% of the footprint of the original building or 20% of the footprint of the building as it now stands. The remainder of the roof area of the original building is taken up with the walkway giving access to the flats, the balconies at the front and the paved areas to the rear. The remainder of the roof area of the commercial premises is felted and not designed for frequent pedestrian use.

### The Lease

0.4 The lease (which, as we were told by Ms Humm, is identical in its terms to the lease of Flat 175A) is dated 12 April 1990 and made between the Cambridge & District Co-operative Society Ltd and the Trustees of the Society's Pension Fund. It appears that the lease of Flat 175A was granted between the same parties probably on the same date. The leases were drafted by Few & Kester, Solicitors. It seems unlikely that any other solicitors were involved, which had the consequence that the leases were not subjected to critical scrutiny.

0.5 The lease is for a term of 125 years from 1 January 1990 at a rent of £50 per annum, rising by £25 every 25 years. The premium for the lease was £39,692. "The Flat" was defined to include a parking space but excluded the balcony at the front, the paved roof area at the rear and the roof space. There is no provision in the lease giving the tenant the right to use the balcony (to which there is no access except through the flat) or the paved roof area.

0.6 The tenant's covenants are set out in the Fourth Schedule, the landlord's covenants in the Fifth Schedule and the service charge arrangements in the Sixth Schedule. The Tribunal is concerned with only those relating to the service charge arrangements, insurance and payment of legal costs. In summary, the landlord covenanted to repair, maintain etc and to insure the main structure of "the Building". The tenant covenanted to contribute by way of service charge 25% of the landlord's costs of so doing. By paragraph 13 of the Fourth Schedule the tenant covenanted to pay to the landlord all costs charges and expenses (including legal costs and surveyors' fees) incurred in or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture has been avoided otherwise than by relief granted by the Court.

0.7 Paragraph 13 calls for some explanation. Section 147 of the 1925 Act relates to decorative disrepair and is not relevant for present purposes. Section 146 sets out the procedure to be followed by a landlord who seeks to forfeit the lease for breach of covenant and provides that a landlord shall be entitled to recover as a debt due to him from a lessee all reasonable costs and expenses properly incurred by the landlord in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the tenant, is waived by the landlord, or from which the tenant is relieved, under the provisions of the Act.

0.8 Two features of the lease are immediately apparent. Firstly, it is very important to identify correctly "the Building" and, secondly, however "the Building" is defined the tenant is required to make a disproportionately high contribution to the landlord's costs having regard to the relative sizes of the residential and commercial accommodation. This could be very onerous in the event of any major structural repairs. Because commercial premises are more expensive to insure than residential, the obligation is potentially particularly onerous where insurance costs are concerned.

0.9 "The Building" is defined in the lease as "that part of the property known as Branch No 28 175 Histon Road Cambridge and which is shown for the purposes of identification only edged blue on Plan A ..." Plan A appears to be a building plan drawn by E H C Inskip & Son Architects and Surveyors. Although Mr Marshall's copy of the lease (which contains the only available copy of the plan) is a black and white copy, it can clearly be seen that the area edged on the plan covers only about half the footprint of the current building. There is also a Plan B, another Inskip building plan showing the layout of the flats and roof details.

0.10 Markings on the plans suggest that they were prepared in connection with the construction of the flats and the rear extension. Unfortunately, the date of the plans is not shown, the bottom edge of each plan having been cut off in the copying process. This probably occurred at the time when the lease was drawn, as the lease plans are clearly scaled down copies. However, the brickwork of the flank walls of the flats and of the extension is similar, which tends to confirm the impression created by the plans that the extension was also constructed at about the same time as the lease was granted.

## 1. THE DISPUTE

1.1 The tenant purchased his flat in June 2007. The vendor told him that he paid nothing to the landlord in respect of insurance costs; he arranged his own insurance. Mr Marshall took a mortgage and was required to provide to his mortgagee evidence of property insurance. So he likewise arranged his own insurance. It appears that Ms Jakuboska (who purchased her flat in September 1997) likewise arranged her own insurance. The landlord's representatives confirmed that, although the landlord did insure the building, it did not seek contribution from the leaseholders prior to 2008, when a decision was taken to implement the relevant provisions of the leases. That was shortly after Mr Heptinstall, a chartered surveyor who had previously worked in private practice, took up his post.

1.2 Mr Marshall therefore received, in August 2008, a demand for ground rent and an insurance contribution of £518.94. He was greatly surprised, not least because his own insurance from Direct Line for year commencing 28 June 2007, which included contents insurance, cost only £73.50. Ms Jakubowska received a similar demand. Both of them queried the demands and refused to pay the insurance charge pending an adequate explanation. Both are still refusing to pay. The landlord's representatives say that they are treating Mr Marshall's case as a test case and will apply the principles set out in our Decision to the case of Ms Jabowska.

1.3 Mr Marshall says he contacted the managing agents and the landlord and spoke to a variety of people at Touchstone and at the Co-op head office. The only explanation he could get out of them was that he was required to pay the insurance contribution under the provisions of the lease. He was supplied with an insurance schedule prepared by the landlord's Group Risk and Insurance Department which showed the "Buildings Day One Value of the flat as £150,336 (which was not very different from the price he had paid for the flat), the Buildings Sum Insured £195,437 (the Day One Value plus 30%) and the premium £518.94. No further explanation was forthcoming.

1.4 The dispute continued into 2009. Eventually Mr Marshall received a solicitor's letter from the landlord's solicitors, Altermans of Finchley, and on 14 May 2009 a claim was issued against him in the Barnet County Court under claim number 9BT01840. The claim was for two years' ground rents £100 plus £518.94 in respect of insurance and £656.94 legal costs (payable under the provisions of the lease in the event of breach of covenant by the tenant). To this was added the Court Fee of £75.00 and fixed solicitor's costs of £80.00 (the claim being dealt with on the small claims track). The total Mr Marshall was being asked to pay was £1,295.96. He was not satisfied that he was legally obliged to pay the £518.94 and accordingly gave notice of his intention to defend the claim.

1.5 Mr Marshall says that he was at all material times willing and able to pay his ground rent. He admitted his liability for that sum in his acknowledgement of service and tendered the rent. Although he says it was initially refused (as to which, see the notice of part admission dated 7 July 2009), the landlord's accounts

(exhibited to the witness statement of Ms Humm) show that eventually it was accepted.

The accounts show it as being paid on 26 October 2009; but it is clear (for reasons that will become apparent) that it was in fact paid at some time before 12 August 2009. However, Mr Marshall's position in relation to the insurance charge was given additional support when, on or shortly after 22 May 2009, he received a demand for the 2009 insurance rent in the sum of £249.79. No explanation was offered as to why this figure was so much smaller than that for the previous year.

1.6 On 2 July 2009 the claim was transferred to Cambridge County Court, that being the Defendant's home court. On 22 July Mr Marshall wrote to Altermans saying that he had never disputed the ground rent and accepted that the Co-op was entitled to arrange insurance on his behalf. However, he found it "hard to comprehend how the £518 bill simply for my building insurance can be considered reasonable ...". He offered £250 to settle the matter, comprising £100 for ground rent and £150 for insurance. He says he received no response to this letter.

1.7 However, by letter dated 12 August 2009 Altermans made a counter-offer by which they required Mr Marshall to pay the following sums to settle the claim: -

(i) Insurance charge for 2008 (by way of concession) £249.79
(ii) Insurance charge for 2009 £249.79
(iii) Ground rent £100.00 (which they said had already been paid) and
(iv) Legal costs of £1,361.89.

Unsurprisingly, Mr Marshall rejected this offer, the costs being a major obstacle to his acceptance.

1.8 On 13 August 2009 Deputy District Judge Rollin stayed the claim for two months to enable the parties to attempt settlement by mediation. Mediation took place but was unsuccessful. As always, the course taken by the mediation and the reason for its failure are unknown to the Tribunal. Mediations are always conducted on a confidential basis so that the parties can hold full and frank discussions without prejudice to their legal remedies.

1.9 The hearing bundle contains an e-mail dated 1 October 2009 from Christine Salvat (the property manager at Touchstone then dealing with the matter) to Claire Bayley of Cambridge County Court (the case officer). This message asserted that the landlord arranged insurance through brokers who tested the market and provided the most competitive quotes. Moreover, in January 2009, she said, the landlord had the whole building re-valued in order to seek a lower insurance premium, which was why the costs were so much lower than the previous year. The landlord was willing, by way of final offer, to reduce the premiums to £200.00 for 2008 and 2009. However, she implied, Mr Marshall would have to pay the legal costs.

1.10 It seems possible that Ms Salvat assumed the Court would transmit this offer to Mr Marshall. However, it is not the function of the Court to act as a post box for litigants. Mr Marshall says he knew nothing of this offer until the day of the hearing.

It was at the back of the hearing bundle and he did not read that far. He assumed that the lease was the last document in the bundle.

1.11 Ms Salvat is currently on maternity leave and has not been contacted. Ms Humm conceded that there was nothing in her file to suggest that the offer was sent to Mr Marshall. Thus, although the e-mail is interesting for reasons to which we will return later in these Reasons, it was not effective as an offer of settlement.

1.12 On 7 October 2009 Mr Marshall wrote to the Court suggesting that the proper forum for the dispute was the LVT (as he had only recently discovered). On 21 November 2009 District Judge Pelly stayed the claim until 25 January 2010 to enable this matter to be referred to the LVT. Mr Marshall made his application to the LVT on 21 December 2009. The President directed the Tribunal Clerk to inform Mr Marshall by letter that the County Court had power to transfer the case to the LVT, which might be an appropriate course of action (and would avoid the necessity for seeking a further stay). Mr Marshall drew this letter to the attention of the Court and finally on 17 February 2010 Deputy District Judge Hollow ordered a transfer to the LVT.

## 2. THE ISSUES

2.1 At page 60 of the hearing bundle (the last page) is an e-mail dated 6 May 2010 from Mr Heptinstall to Ms Humm. It contains what he calls his "comments in respect of insurance". It is worth quoting his comments in full.

> "Premiums
> 2010 Total premium £809.31. Residential element under the terms of the lease at 25% = £202.33 per flat. The figures above are based on a total reinstatement value of £1,091,810, which includes the residential at £164,137 per flat.
>
> 2009 Total premium £785.74. Residential based on the 25% = £196.44 per flat. Total reinstatement value £1,060,009, which includes the residential at £159,365 per flat.
>
> 2008 Total premium £759.30. Residential based on the 25% = £189.83 per flat.
> Total reinstatement value £1,000,008, which includes the residential at £150,336 per flat.
>
> Claims
> The 2 flats are claim free, though there have been claims against the supermarket below for slips, trips and burglary."

2.2 Mr Heptinstall told the Tribunal that, according to the Co-op Group Risk and Insurance Department, these figures are the actual costs incurred by the landlord in insuring the premises at 175 Histon Road through its block policy. Although it was a little difficult to pin Mr Heptinstall down, the Respondent's position appears

to be that the Applicant should pay the contributions set out in that e-mail plus a contribution towards legal costs. We shall return to this point later.

2.3 The Applicant says a reasonable charge would be between £100-150 per annum.

## 3. THE EVIDENCE

3.1 There was little dispute as regards the primary evidence. These Reasons will set out the evidence only insofar as is necessary to demonstrate why the Tribunal reached the findings of fact upon which it has based its decision. However, as will be seen there are a number of relevant matters in relation to which no evidence (or incomplete and inadequate evidence) was before the Tribunal.

3.2 The insurance documents supplied by the Respondent at pages 19 to 32 of the hearing bundle show that the Co-operative Group insures its entire property portfolio under one block policy. The underwriter for all the relevant years was Royal and Sun Alliance. The documents show buildings valuations for Flat 175B only. These are in line with the figures at page 60. In answer to questions from the Tribunal, Mr Heptinstall confirmed that the total costs set out on page 60 were the actual insurance costs for the whole building in its current state. In order to ensure that the Tribunal had proper information about the insurance costs, he asked the Group Risk and Insurance Department for a breakdown of the actual disbursements, which he then set out on page 60.

3.3 Mr Heptinstall could not explain why the premium for Flat 175B for 2008 was set at £518.94, when the actual cost for the whole building was only £759.30. He thought it possible that the difference between the assessed cost for Flat 175B for 2009 (£196.44) and the charge rendered (£249.79) amounted to some form of administrative charge. However, he could not say why the proposed charge for 2010 was only £247.41 while the actual assessed cost had risen to £202.33. He did not, it appears, ask for any further information or explanation. He did not ask why the premium charged for 2008 was so much larger than the actual cost or why the charges for 2009 and 2010 were around 25% more than the costs incurred.

3.4 The outcome is that there is a surprising lack of evidence from the Respondent in relation to a number of highly relevant matters. On the evidence, there was no revaluation in January 2009 (except by way of an inflationary increase) as suggested by Ms Salvat in her e-mail to the Court. Nor was there any evidence before the Tribunal to show that any attempt was ever made to obtain competitive quotations. Mr Heptinstall insisted that this was done but conceded that he could not confirm it from his own knowledge. He offered no explanation as to why fuller information was not available to the Tribunal. Bearing in mind the nature of the landlord and the resources available to the landlord, this was most unsatisfactory.

3.5 It was pointed out to Mr Heptinstall that "the Building" as defined in the lease appeared to be a much smaller structure than at present. His attention was drawn to this issue during the inspection and again during the hearing. It is not clear that he had ever looked at the lease plans. With some reluctance, he eventually accepted that the tenant's insurance contribution must be assessed by reference

to the building in its form as marked on the lease. He said that, as far as he was aware, no attempt had been made to apportion the insurance costs between the original "Building" and the extension. He could not assist the Tribunal in that respect as he had no recent valuation experience.

3.6 Mr Marshall drew our attention to the actual premiums he paid to insure the flat from June 2007 to June 2011 with Direct Line. He accepted that his contributions to the landlord's costs of insuring the whole building are likely to be somewhat higher, for obvious reasons. He said that he might well have paid the sums set out on page 60, had they been charged at the outset, though he thought they were excessive.

## 4. THE LAW

### Service Charges

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

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

4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 a variable administration charge is payable by a tenant only to the extent that the amount is reasonable. An application may be made to the LVT to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease by which an administration charge is calculated.

### Notification within 18 months

4.5 Furthermore, under section 20B(1), if any relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months

before a demand for payment is served on the tenant then, unless subsection (2) applies, the tenant shall not be liable to contribute to those costs. Subsection (2) provides that subsection (1) shall not apply if within that period of 18 months, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required to contribute to them through the service charge.

**Insurance and Insurance Commissions**

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

4.7 In ***Williams –v- Southwark LBC*** (2000) 33 HLR 22 (ChD), Lightman J held that an insurance commission payable to a manager is, in effect, a discount on the cost of insurance, which should be passed on to tenants. However, unless the arrangement of insurance is a service included in the management fees under the terms of the management agreement, the manager is entitled to make a reasonable charge for arranging insurance. In that case, the Council as manager handled local claims and it was conceded that, in those circumstances, an allowance of 20% made by the insurers was a reasonable fee.

**Variation of Leases**

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

**Costs of enforcing covenants**

4.9 A landlord is entitled under section 146 of the Law of Property Act 1925 to recover from a tenant in breach of covenant costs (including legal costs and surveyors' fees) reasonably incurred in enforcing the covenants. It is not necessary for the landlord actually to seek forfeiture of the lease in order that such costs may be recoverable. In most cases, the lease will contain an express covenant requiring the defaulting tenant to pay those costs. Such costs are not confined to costs recoverable through the Courts, which may often be considerably less than the actual costs incurred.

4.10 A landlord who has more than one residential tenant holding a long lease in the same building generally has an obligation to each residential tenant to enforce the covenants against other tenants. That is in the interests of the tenants generally, as it tends to maintain standards in the building and to ensure that tenants

generally do not suffer nuisance, annoyance or inconvenience through the unreasonable conduct of any individual tenant. Enforcement of the service charge provisions is, of course, important to ensure that every tenant pays his fair share.

4.11 However, if the reasonable costs of enforcing the covenants cannot be recovered from the defaulting tenant, the landlord is generally entitled to recover those costs from the tenants generally through the service charge provisions.

**Costs generally**

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

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

4.14 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. However, it appears that in this case no fees have been incurred.

## 5. CONCLUSIONS

5.1 The Tribunal is satisfied that the footprint of "the Building" for the purposes of the lease, as shown on Plan A, includes only about half of the current footprint. The commercial accommodation in "the Building" appears from our brief inspection to represent approximately the current retail sales area. The extension at the rear of "the Building" houses storerooms, a staffroom, presumably office accommodation and the loading bay. The Tribunal accepts the figures on page 60 as being the true and reasonable costs of insurance of the premises in their current form.

5.2 In the absence of any formal apportionment of the insurance costs, the Tribunal has undertaken a rough and ready apportionment of its own based on the knowledge and experience of its members. The Tribunal concludes that the apportioned premium costs attributable to the residential accommodation (the two flats) for 2010 amount to £100 for Flat B and £90 for Flat A. The total premium for 2010 is just over £809, so that £619 is attributable to the commercial accommodation. As the premises are now used, about 60% of the commercial element of the premium is attributable to the retail area and 40% to the ancillary accommodation. Thus the premium attributable to the commercial accommodation within "the Building" amounts to £371.

5.3 Accordingly, the total premium attributable to "the Building" (commercial and

residential) is £561, of which each residential tenant must pay 25% or (to the nearest £) £140. Using the same proportions, the figure of 2009 is £136 and for 2008 £131. In the absence of any evidence to support the inclusion of an administrative charge, the Tribunal finds that none is payable.

5.4 The Tribunal will transfer the case back to Cambridge County Court to deal with on the basis of the Tribunal's findings (which are binding on the Court).

**Costs**

5.5 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. An obvious injustice would occur if a successful tenant applicant (and indeed his fellow tenants) were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. A wide variety of other circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.6 The Tribunal accepts that Mr Marshall was at all times willing and able to pay the ground rent, as he made clear in his acknowledgement of service. He did in fact pay it at a relatively early stage of the litigation. It is not clear whether the rent was actually refused or whether Mr Marshall obtained that impression from the notice of part admission dated 7 July 2009. In any event, we find that, had it not been for the insurance dispute, the matter would never have been referred to solicitors and no legal costs would have been incurred. Mr Marshall was clearly successful in the insurance dispute and there appears to be no basis for awarding costs against him.

5.7 Moreover, Mr Marshall in his letter of 22 July 2009 offered to pay £150 for the 2008 insurance costs (the only insurance costs included in the claim). That is more than he was liable to pay, as the Tribunal has found. The Applicant may argue that he should have made a payment or an offer of payment at an earlier stage; but he was not provided with the necessary information to assess the true figure. Indeed, it appears that, at least until service of the hearing bundle, the information provided to him was extremely misleading.

5.8 Even if the Respondent's Group Risk and Insurance Department made a genuine mistake at the outset, there is no excuse for bringing a grossly inflated claim in the County Court and then proceeding with it on a false basis. At an early stage, those responsible for instructing Altermans ought to have checked the figures. In circumstances where the insurance information provided to the tenant came from within the Group, it was obviously necessary to check whether those figures represented the actual costs incurred. The huge discrepancy between the 2008 and 2009 figures (which became known only a few days after the claim was issued in the Barnet County Court) ought to have led to such a check as a matter of urgency. Yet no checks of any kind were made or, if they were made, the results were concealed from Mr Marshall (and from the Court). Instead, the Respondent continued to pursue Mr Marshall for excessive (though gradually diminishing) sums relying on inaccurate and self-serving documents created by its own employees.

5.9 Moreover, it seems unlikely that Ms Salvat would have made the assertion (which we find to be untrue) that the property was revalued in January 2009 unless she had express instructions to do so. The assertion is quite specific and deals with matters of which Ms Salvat could not have been aware unless that information came from the landlord. That assertion appears to have been an attempt to explain away by the invention of an untruth the grossly inflated charge for 2008 and to justify the much reduced charge for 2009, although this was itself an inflated figure. However, we leave that matter for the Court to decide.

5.10 The Tribunal does, however, find that it was unreasonable to refer the matter to solicitors without checking the figures, Mr Marshall having queried the insurance costs. Had such a check been undertaken, it seems unlikely that solicitors would have become involved. Bearing in mind that legal costs very often far exceed the sums at stake in this kind of dispute, it is incumbent on landlords to think very carefully before engaging lawyers. Legal costs and the threat of legal costs are often, in our experience, employed *in terrorem* by disreputable landlords to stifle dissent. We feel sure that the Co-operative Group would not want to act oppressively; but on this occasion that has been the consequence of the actions of some of its employees. Furthermore, on any view, Mr Marshall's open offer of 22 July 2009 should have brought an end to proceedings. In our judgment the solicitor's fees and other legal charges from start to finish were not reasonably incurred and cannot lawfully be included in any service charge account for the property.

5.11 It is difficult to escape the conclusion that information was kept from the Tribunal to avoid embarrassment to the landlord and we so find. The Tribunal has no hesitation in concluding that it would be just and equitable in the circumstances of the case to order that the landlord should be prevented from treating its costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property. Accordingly, we make an order under section 20C of the 1985 Act. It is, of course, for the Court to decide what costs to award (one way or another) in respect of the county court proceedings.

**Geraint M Jones MA LLM (Cantab)**
**Chairman**
**2 July 2010**