

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/LIS2009/0096

In the matter of applications under Sections 20C and 27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Re: Flats 1, 2, 3 and 5, 26 Surrey Road Bournemouth BH4 9BX

Applicants	Michelle Paige, Craig Sillence, Michelle Legg and Duncan Roberts
Respondent	Long Term Reversions Limited
Date of Application	of 21 October 2009 (& 22 March, 2010 re administration charges)
Date of Inspection	22 March, 2010
Date of Hearing	22 March, 2010
Venue	Royal Bath Hotel, Bournemouth
Representing the parties	Mr Sillence for the Applicants Mrs S. Wisdom, Leasehold Legal Services, for the Respondent
Also attending	Mrs Sillence (formerly Michelle Legg), Mr and Mrs Paul, Miss S. Moon & Mr S Maley, Countrywide Managing Agents

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
A J Mellery-Pratt FRICS	Valuer Member
J Mills	Lay Member

Date of Tribunal's Decision: 29 March 2010

### **Decision**

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that, for Flats 1, 2, 3 & 5, 26 Surrey Road Bournemouth BH4 9BX in respect of the accounting years 2005/06 to 2008/09, subject to due compliance by the Respondent with paragraph 2 of the 5th Schedule to the leases of the Flats as to certification of the service charge accounts, the following sums are reasonable and payable for the whole property known as 26 Surrey Road, Bournemouth (of which 20% is payable per Flat):

Item	2005/06	2006/07	2007/08	2008/09
General repairs	-	£70.50	-	-
Gardening	-	-	-	Nil
Accountancy fees	Nil	Nil	Nil	nil
Management fees (ex VAT)	£400	£400	£400	£400
Professional fees	£293.75	£70.50	Nil	nil
Annual return	-	Nil	Nil	-

2. The Tribunal further determines in accordance with the provisions of Section 27A of the Act, that the sum of £3525 for estimated service charge in respect of the accounting year 2009/10 is reasonable and payable for the whole property known as 26 Surrey Road, Bournemouth (of which 20% is payable per Flat).
3. The Tribunal further determines in accordance with the provisions of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that for the accounting year 2009/10, the sum of £554.30 in respect of arrears collection costs is not payable.
4. Under Section 20C of the Act, the Tribunal makes an Order that the Respondent's costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

5. *NOTE. For reference, the above decisions (at paragraphs 1, 2 and 3) and those other items agreed by the parties are set out together in the appendix to the Reasons below. It does not form part of the decision.*

## **Reasons**

### **Introduction**

6. Application was made by the Applicants to the Tribunal under Section 27A of the Act to determine whether certain service charges for the years mentioned in the decision are reasonable and payable. The application had also sought determination of other service charges but which had subsequently been agreed by the Applicants so that no determination was required.
7. A further application was made by the Applicants to the Tribunal to determine under the provisions of schedule 11 to the Commonhold and Leasehold Reform Act 2002 whether arrears collection costs of £554.30 in respect of the accounting year 2009/10 were reasonable and payable.
8. The Applicants further applied for an order under Section 20 C of the Landlord and Tenant Act 1985 limiting the Respondent's costs of these proceedings being recoverable from the lessees as service charge.

### **Inspection**

9. On 22 March, 2010 the Tribunal inspected 26 Surrey Road Bournemouth (the Property) in the presence of the Mr and Mrs Sillence, Mr Paul, Miss Moon and Mrs Wisdom.
10. The Property is a detached house, constructed under pitched roofs, converted into 5 self-contained Flats. The internal common parts comprise an entrance hallway and staircase serving Flats 1, 3, 4 & 5. Flat 2 has a separate entrance. The external common areas include a driveway and flowerbeds/borders.
11. The property is in poor condition for its age and character, showing a need for significant repairs and maintenance and decoration both internally and externally and the flowerbeds/borders need tending. The general appearance of the property is that it has not had maintenance for some years. Externally, the rainwater goods need repair, the wood frame windows need repair of some rot and complete repainting and the walls repainting. The internal common parts need painting and would benefit from new carpeting. It was understood that the fire alarm system does not function and has not done so, for some time.

### Hearing, Representations & Consideration

12. A hearing was held the same day, those attending being noted above. Evidence and submissions were received and the case papers were considered so far as material to the issues in this case. Mrs Wisdom was instructed for the Respondent by Countrywide Managing Agents who had been appointed to manage the property only since October 2008. They had received information on disc which provided copies of limited papers, accounts and invoices from their predecessor but were understandably unable to provide a great deal more assistance on issues arising prior to that date.

### Lease terms.

13. Amongst the papers we have a copy of the lease of Flat 2 which we understand, so far as material to these proceedings, is in a form and terms which are common to all Flats in the property. The lease is dated 24 July, 1992 and made between Viscount Properties (Bournemouth) Limited (the Landlord) Clare Mullis (the Tenant) and Surrey 26 Management Limited (the Managers).

14. So far as material to these proceedings, the lease contains the following provisions: --

- a. in terms, a covenant to pay 20% of the service charge, including interim payments on account, the landlord being responsible for keeping a detailed account of service costs and having a service charge statement prepared for each period ending 1 July, that statement to be certified by a member of the Institute of Chartered Accountants in England and Wales.
- b. The services to be provided, and paid for by service charge, are set out in the 6th schedule and include usual repairing, decorating and maintenance obligations, including the grounds and gardens, insuring the building and obtaining insurance valuations and (paragraph 13) "keeping accounts of service costs, preparing and rendering service charge statements and retaining Accountants to certify those statements."
- c. The lease provides for half yearly payments on account of final service charge on the latest service statement. Our understanding of this provision and the other provisions of schedule 5 are that "latest service statement" must be taken as a reference to a "service charge statement" which must be certified as mentioned above.

### Disputed items.

15. General repairs 2006/07. The total charge under this heading was £170.38 of which the Applicants challenged the sum of £99.88 in relation to a fire alarm attendance. The Applicants considered that they should not pay this charge which they considered was incurred because the fire alarm system had not been serviced for some years previously. The cost would not have been incurred had it been serviced and the alarm has not worked since the date of that call out and is still out of order. The Respondent was unable to assist us. We accepted the Applicants' evidence. While they would presumably have been willing to pay a periodic charge for servicing, there had been none. As a result they had unreasonably been charged for the callout fee which we found to be unreasonable and reduced it to nil.
16. Gardening 2008/09. The Respondent was unable to produce an invoice to substantiate the charge of £239.70. The Applicants' evidence was that no gardening had been carried out by anyone but themselves during this year or any other year in question so they should not be required to pay. This evidence was substantiated by our inspection of the external parts. As the charge was unsubstantiated and in the light of the Applicants' evidence which we accepted there is no evidence to justify any charge and we reduced the item to nil.
17. Accountancy fees 2005/06 to 2008/09. The Applicants considered the fees for each year should not exceed £250. The Respondent's case was that each of these charges related to auditing of the company accounts of the Managers and the sums charged for this work in each year were reasonable. The Respondent also submitted that these costs were payable as falling within clause 5.2.i and Schedule 6 to the lease, relying on paragraph 13 as quoted above and also that such accounts were required to maintain the Managers in being. The Respondent also stated that the service charge accounts had yet to be certified as required by the 5th Schedule. We were satisfied that these fees for each of these years related only to auditing of the company accounts. However, while auditing of company accounts may be necessary, Schedule 6 provides for service charge to be paid only, as regards accounting, for the cost of keeping service charge accounts etc. That does not cover company accounts. Therefore, no work having been done by auditors/accountants towards which service charge is payable, we reduced this item in each year to nil.
18. Management fees 2005/06 to 2008/09. The Applicant stated that neither Countrywide nor a series of previous managing agents had carried out maintenance of the Property and so the fees should be reduced to £40 per unit per annum. The Respondent considered the charges made in each year were reasonable for the work done in each year, while accepting

more work could have been done to comply with the Service Charge Residential Management Code of the RICS. It accepted that the service provided could have been better and they had no evidence of site visits or inspections. We have evidence from the Applicants of continuing failure by managing agents through these years to carry out any or any significant work, or deal with complaints etc. From our knowledge and experience we would expect in the first 2 years under consideration a management fee per unit (for usual full management services) would be about £150 plus VAT and in the other years increasing up to £175 plus VAT, the latter figure also being submitted by the Respondent. Some management had been carried out including demanding service charges and paying some invoices, but it is plain on the evidence and from our inspection, however, that the standard of management to date has fallen well below that generally expected for such fees. We decided that a reasonable fee for each year in question for the standard of management provided would be represented by £80 per unit i.e. £400 per year plus VAT.

19. Professional fees 2005/06.

- a. £293.75 of the total of £388.75 relates to the carrying out of a damp report by Building Consultancy Bureau. There is an Invoice for this amount relating to a report on the Flat 2 but there was no evidence of a report having been seen and the Respondent had not approached Building Consultancy Bureau to try to obtain a copy. The Applicants said that they would be able to obtain a report for £35 plus VAT. From our own knowledge and experience and with our knowledge of Building Consultancy Bureau, we were satisfied that it would not have invoiced for work not done and that the cost of a report of this nature, carried out by a professional firm, would be likely to be the sum charged of £293.75 including VAT: a proper report would not be obtained for any sums such as the Applicants suggest. We accordingly allowed that item as being reasonable.
- b. However, the other professional fees totalling £95 relate to fees incurred by the manager by reason of its company status: secretarial fees and change of registered office and resignation of a director. In the same way that we have reduced the accountancy fees to nil we also reduced fees charges to nil as they relate to company matters and not matters covered by service charge in the lease.

20. Professional fees 2006/07. The sum charged is £330.42 being the amount of an Invoice of Dunlop Haywards Residential Limited for company secretarial

duties. For the same reason as referred to in the preceding paragraph, we reduced these charges to nil.

21. Annual return 2006/07 and 2007/08. Again, these relate to the company status of the Managers and are not recoverable as service charge under the provisions of the lease, so we again reduced these charges to nil.

22. 2009/10 estimated service charges. The Respondent estimated these as a total of £2547.61 on the basis of the service charges for the year ended 14 July, 2009. On that basis the charge per Flat would be £653.60 payable by equal half yearly instalments. However, the statement for the year ended 14 July, 2009 has not been certified nor has any service charge statement before that. Therefore, we concluded that a reasonable estimation would be achieved on the basis of the uncertified statement to 14 July 2009. We set out below the sums that we considered to be reasonable on the evidence before us. We note that the statement to 14 July, 2009 does not include insurance premium. While that is because the insurance premium is not collected by Countrywide as part of the service charge but is collected separately by Pier Management on behalf of the Respondent freeholder, Long Term Reversions Ltd, it is nevertheless a service charge which should be included in any service charge statement, certified or otherwise. Particular points in our consideration of the figures below are as follows:

- a. Electricity. Averaged over the years we considered £75 to be a reasonable estimation.
- b. Insurance premium. On the basis of previous years we considered a reasonable estimation to be £1200.
- c. Cleaning. We considered the cost of a full-year might reasonably be expected to be £650.
- d. Accountancy. On the basis that company requirements for accountancy is not chargeable as service charge, we considered that £300 including VAT would be an appropriate estimation of the cost of certification of service charge accounts.
- e. Management fees. Making a reasonable assumption that the management would now be brought up to standard, an estimate of £1000 would be appropriate at a rate of about £175 plus VAT per Flat.
- f. Gardening. In the expectation that gardening would recommence, a reasonable estimate would be £300.
- g. Professional fees. For the reasons stated above we would not allow any estimated figure.

23. Accordingly, a reasonable estimated service charge for this year would calculate as follows:

Item	estimate
Electricity	£75
Insurance premium	£1200
Cleaning	£650
Accountancy	£300
Management	£1000
Gardening	£300
Professional	Nil
Total	£3525

24. Administration charges. These had been incurred and charged as service charge by reason of alleged failure of one or more lessees to pay service charges when required. The Respondent accepted that as the service charge accounts had not been certified, any demands issued would not be valid so that service charge could not be in arrear. We concurred in this view and accordingly disallowed administration charges entirely as being not payable.

25. Section 20C. The Respondent accepted that it would not be charging to service charge its costs in connection with these proceedings. In all the circumstances of this case we would have made such an order anyway and did so.

26. The Tribunal made its decisions accordingly.

Signed

M J Greenleaves

Chairman

A member of the Leasehold Valuation Tribunal  
appointed by the Lord Chancellor



Appendix

Item	2005/06	2006/07	2007/08	2008/09	2009/10
Electricity	£51.13	£120.04	£98.00	£26.87	-
Insurance	£1220.40	£1286.85	£1192.21	Not known	-
General repairs	£990.56	£70.50	Nil	Nil	-
Cleaning	£763.74	£793.12	£587.50	£431.25	-
Gardening	Nil	Nil	Nil	Nil	-
Accountancy fees	Nil	Nil	Nil	Nil	-
Management fees (ex VAT)	£400	£400	£400	£400	-
Professional fees	£293.75	Nil	Nil	Nil	-
Annual return	Nil	Nil	Nil	Nil	-
Arrears collection costs	Nil	Nil	Nil	Nil	Nil
Interest receivable	Nil	(£1.45)	(£2.06)	Nil	-
Estimated service charge for year	-	-	-	-	£3525 (budget estimate)