

Landlord and Tenant Act 1985 as amended by
Commonhold and Leasehold Reform Act 2002

2755

DETERMINATIONS OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

**Richard Leslie Bland, Susan Lewis and David Turner, and Mark Spendlove
(the Applicants)**

**and
New Liberty Property Holdings Limited (the Respondent)**

on the Applicants' applications:

- (1) under section 27A for determinations of liability to pay service charges for the years 2005-2006 and 2006-2007; and**
- (2) for an order, under section 20C, that the Respondent's costs in connection with these proceedings shall not be part of any service charge**

Properties: 1658A, 1660A and 1662A High Street, Knowle, West Midlands B93 0LY

Heard at: The Panel Office
On: 24th October 2006

APPEARANCES:

The Applicants: In Person
The Respondent: No Appearance

Tribunal members:

Mr W J Martin, (Chairman)
Mr. J E Ravenhill F.R.I.C.S.
Miss N Jukes

Date of determination: 24th October 2006

- DETERMINATION: (1) That the insurance premiums are reduced in accordance with the details hereinafter provided**
(2) The Tribunal grant the Section 20C Order to the Applicants

The application:

- 1 We set out below the substance of the application (the '**Application**') dated 15th August 2006 for determinations of the Applicants' liability for service charges for the years stated for the properties stated under section 27A Landlord and Tenant Act 1985, inserted by section 155 Commonhold and Leasehold Reform Act 2002, (the '**Act**'); and for an order that the costs of **New Liberty Property Holdings Limited** (the '**Landlord**') in connection with these proceedings shall not be part of any service charge under section 20C of the Act.

Tenant/Applicant	Property	Years
Miss S Lewis and Mr D Turner	1658A High Street	2005/06 and 2006/07
Mr R L Bland	1660A High Street	2005/06 and 2006/07
Mr M Spendlove	1662A High Street	2005/06 and 2006/07

The Properties and adjoining/adjacent property:

- 2 The subject Properties (the '**Flats**') comprise three two storey flats situated above a branch of National Westminster Bank in the main shopping area of Knowle. The properties are all slightly different sizes and they are approached via a fire escape and a roadway at the north side of the bank. In addition to the bank itself, there are three garages let on separate occupational tenancies to the Applicants. There is also a large store, which was apparently once used by the bank, but is now vacant, and a further private car park for the bank. The Flats, the Bank, the garages, the store and the car park are all part of the 'Building' defined by the Leases.

The Disputed Service Charges

- 3 The amounts disputed by the Applicants are the proportions of the insurance premium charged to them in accordance with the provisions of the Leases under which the flats are held. All of the Leases are identical and provide with regard to the insurance rent:

2.2 The Landlord or his agent or the Surveyor (in each case acting reasonably) is to decide what part of the premium paid to insure the Building is attributable to the Property.

The Leases also contain a covenant by the Landlord to insure:

Cl 4.2.1 To insure the Building and all additions to the Property to which the Tenant notifies the Landlord under a policy which satisfies the conditions set out below

Cl 4.2.2 The conditions which an insurance policy must comply with are:

4.2.2.1 cover is provided against the following risks ('insured risks') so far as that cover is generally available for that type of building:

fire lightning explosion earthquake riot civil commotion aircraft aerial devices storm flood impact by vehicles and damage by malicious persons and vandals

and other risks which the Landlord from time to time reasonably considers should be covered

4.2.2.2 the sum insured is at least the full rebuilding cost of the Building and any additions to it which should be insured plus an appropriate percentage for professional fees and three years loss of rent

4.2.2.3 the policy is issued by a reputable insurance office

The Landlord's Insurance Brokers are Mulberry Insurance Services ('Mulberry'). The Certificate of Cover for the year 10/06/2006 to 10/06/2007 issued by Mulberry provides:

(a)	Buildings - 30% Inflation Provision	£1,196,000
	Declared Value	£ 920,000
(b)	Estimated Loss of Rent 36 months	£ 141,900
(c)	Property Owners Liability	£5,000,000

Mulberry also confirms:

The policy extends to include:

Alternative accommodation (protecting the tenant)	}	
Trace and access	}	
Loss of metered utilities	}	
Damage to grounds	}	£50,000 limit
Clearance of drains	}	
Unauthorized use of water, gas or electricity.	}	

Replacement Locks and keys £10,000 limit

Royal Bank of Scotland plc is noted as joint insured and first loss payee. This is further enhanced to include a Non-Vitiation clause, together with mortgage non-invalidity and a no lapse agreement.

The Applicants produced debit notes for the insurance for the two years in question. The amounts are the same for each of the years and are as follows:

1658A £493.91 plus £19.50 terrorism cover (13.110% of the total)

1660A £466.40 plus £18.42 terrorism cover (12.380% of the total)

1662A £682.66 plus £26.95 terrorism cover (18.120% of the total)

The above percentages are the percentage of the overall floor area of the flats within the Building. According to Mulberry these percentages have been accurately measured by King Sturge, who are the Lessor's Agents. The other percentages are: National Westminster Bank - 35.23% and the Store - 21.17%.

Inspection and hearing:

- 4 We inspected the exterior of the Building and the interiors of the Flats on 24th October 2006 and the hearing was held on the same day at which all of the Applicants appeared and spoke. The Respondent was neither present nor represented.

5 **Written Representations:**

The Applicants, in compliance with Directions of the Tribunal, provided a written statement of the matters upon which they intended to rely. The Respondent did not comply strictly with Directions, and did not put forward a written statement. However, Mulberry provided the information referred to in paragraph 3 in the form of a letter to the Tribunal, which contains rebuttals of parts of the Applicants' case.

Jurisdiction:

- 6 Our jurisdiction is not contested and we are satisfied that we have the jurisdiction to determine the Application. Although the Leases separate the insurance rent from the general service provisions, Section 18 of the Act, in the definition of 'service charges' specifically includes insurance.

The Applicants' case generally:

- 7 The insurance premiums for the Flats are in excess of previous demands, when the premium was included in the ground rent of £100 per annum. The Landlord was originally National Westminster Bank, who granted the Leases in the early part of 2004. Prior to that each of the Applicants had been assured tenants of the Bank, but had been given the opportunity to purchase the Flats (on very short notice, and on a take it or leave it basis) but at an attractive price. Subsequently the Building was sold to the Respondent, and following that purchase the new insurance arrangements were put in place.
- 8 A number of quotations were provided by the Applicants which the Applicants maintain show the premiums being charged to them as much too high. The average premium quoted is about £170 per annum. The quotations had been obtained from the internet and are from reputable companies such as First Direct, Lloyds TSB and Saga.
- 9 The Applicants point out that the ground rent they pay is £100 per annum for each flat. As the information from Mulberry shows that the three years loss of rents are estimated at £141,900 the Applicants feel that they are clearly being over charged in respect of this element of the cover. Similarly, with regard to the Public Liability cover of £5,000,000, the Applicants feel that much of this is due to the bank's occupation and not their residential use.
- 10 The Leases require the Landlord to act reasonably with regard to the apportionment. They feel that an apportionment based on floor areas is inappropriate given the enhanced cover required in respect of the bank.
- 11 The Applicants feel the sum insured is too high, and that the 30% inflation element means that the Building is over insured by at least this margin.

The Landlord's case

- 12 The only information supplied by the Landlord consists of the letter and statement from Mulberry dated 3rd October 2006. Mulberry's comment on the alternative quotations provided by the Applicants is that these will not provide like for like cover with that arranged by them for the Respondent. The quotations have all been prepared on the basis that the Flats are owner-occupied, and do not note the interests of the freeholder or of Royal Bank of Scotland plc. Mulberry are a specialist firm of brokers who deal with a panel of insurers who are able to provide the high level of service which is required. The insurers chosen in this case were selected because they satisfied the needs and demands of the Respondent. The

premium has been apportioned in accordance with measured floor areas as provided for and calculated by King Sturge. Mulberry states that it understands that the Leases provide for recovery on this basis.

Our Determination

13 It would have been vastly preferable if the Respondent's Agent and a representative from Mulberry had attended the hearing so that we could have questioned them as to the breakdown of the premium between the various risks covered. In the absence of assistance from them we have found it necessary to draw certain inferences in reaching our determination. Having read the submissions from both parties, heard the Applicants' in person and from our inspection of the premises we find and hold as follows:

(i) We find that the insurance rent is part of the service charge and that the provisions in the Leases as to the payability of the insurance rent are enforceable. However, we find that the Respondent has not acted reasonably in apportioning the overall premium which, multiplying out from the premiums charged to the Applicants, is £3767.50 (approximately).

(ii) The sum assured selected by the Respondent (£920,000) and the 30% inflation addition is reasonable to rebuild the bank premises, the storeroom, the garages, and the Flats. However, we also find that it is inherently unreasonable that the residential tenants above the bank should be responsible for any element of the premium which relates to the enhanced specification of a bank premises (security in the form of thicker walls, vault, strong room, ATM etc.).

(iii) It is unreasonable for the Applicants to bear anything other than a nominal burden in respect of the loss of rent cover. We infer that the cover is at the level it is because the bank premises are let at a commercial rent.

(iv) It is unreasonable that the Applicants are charged any additional premium in respect of the enhanced cover required by the Respondent, except the provision of alternative accommodation during rebuilding. In particular the endorsement making Royal Bank of Scotland plc as joint insured and first loss payee is of no benefit to the residential tenants, and in certain circumstances may be to their detriment. The Non-vitiation clause is also something that residential owners would not expect to be included within their cover.

(v) The Applicants should not be responsible for the insurance in respect of the garages. In this regard we assume that the garage floor areas are not included within the floor area percentages given.

14 In the light of the above, it would have been our preferred option to have obtained from Mulberry a breakdown of the premium, so that we could have disallowed elements of the actual premium to arrive at the proportion due from the Applicants. Our approach, in the event, is as follows:

(i) Using our knowledge and experience as an expert tribunal, but not any special or secret knowledge, we assess that a reasonable premium to provide for the rebuilding of the Building on the assumption that the commercial element is not a bank, and at the rebuilding cost of £920,000 plus 30% inflation is £1500. We add ten percent to this base figure to allow for the 'alternative accommodation' enhancement which produces a hypothetical premium of £1650.

(ii) We apply the floor percentages given to the hypothetical premium. After rounding this produces the following premiums which we determine as payable by the Applicants. The Terrorism cover is shown alongside. We accept the (relatively) insignificant amounts in respect of Terrorism as reasonable.

1658A High Street	£220 plus terrorism £19.50	Total £239.50
1660A High Street	£205 plus terrorism £18.45	Total £223.42
1662A High Street	£300 plus terrorism £26.95	Total £326.95

- 15 Our Determination is that the above premiums are payable by the Applicants for the years 2005/2006 and 2006/2007.

Section 20 C Application

- 16 Section 20C (1) of the Act provides:

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, residential property tribunal, leasehold valuation tribunal or the Lands 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.

Subsection (3) provides:

(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.

On the basis that the Application to the Tribunal had been almost inevitable because of the unacceptable conduct of the Respondent in failing to deal with the Applicants' queries over the insurance premiums and the failure of the Respondent to comply with the Directions of this Tribunal, we find it just and equitable to grant the section 20C Order requested by the Applicants.

Signed



W.J. Martin, Chairman

Dated

13 DEC 2006