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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

London Rent Assessment Panel

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 35 AND 37 OF THE LANDLORD AND TENANT ACT 1987

Case Reference: LON/00BK/LVT/2012/0003

Premises: Bedford House, 61 Lisson Street, London NW1 5DD

Applicants	:	**Mr Kishore Dherani**	**Flat 6**
		Mrs L Azoulay	**Flat 4**
		Mrs Nargis Qadir	**Flat B**
Representative	:	**Mr K Dherani**	
Respondent	:	**Mintgreen Properties Limited**	
Representative	:	**Mr Stephen Murch**	**Counsel**
Date of Hearing	:	**12 November 2012**	
Leasehold Valuation Tribunal	:	**Mr John Hewitt**	**Chairman**
		Mr Michael Taylor	**FRICS MAPM**
		Mrs Lorraine Hart	
Date of Decision	:	**22 January 2013**	

Decisions of the Tribunal

1. The Tribunal determines that:
   - 1.1 The leases of flats 4 and 6 shall be and are hereby varied as follows:
     1. In section 7 of the 'Particulars' on page 1
        - (a) Delete *"(A) RESIDENTS EXPENDITURE: SIXTEEN.FIVE (16.5) per cent";*
        - (b) Delete *"(B)"*

(c) Delete *"THIRTEEN.TWO (13.2)"* and insert *"ELEVEN.SIXSIX (11.66)"*

2. Delete paragraph 1 of The Fifth Schedule and insert in its place:
"The Service Charge shall be Eleven.Sixsix (11.66) per cent of the Building Expenditure. The Building Expenditure shall comprise the cost to the Lessor of maintaining such insurance and services as are referred to in clause 5(1) hereof"

1.2 The lease of flat B shall not be varied;

1.3 An order shall be made (and is hereby made) pursuant to section 20C Landlord and Tenant Act 1985 to the effect that none of the costs incurred by the Respondent in these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants;

1.4 The Respondent shall by **5pm Friday 22 February 2013** reimburse the Applicants the sum of £300 fees paid by them to the Tribunal in connection with this application; and

1.5 The Respondent shall by **5pm Friday 1 March 2013** lodge such notice or notices with the Land Registry as shall be necessary in order that the fact of the variations to the leases ordered by the Tribunal in this Decision may be noted on the register of each of the respective leasehold titles and the freehold title.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

The Application and procedural background

2. On 3 July 2012 the Tribunal received an application from the Applicants [1]. It was made pursuant to sections 35 and 37 Landlord and Tenant Act 1987 (LTA 1987). There is also a related application made pursuant to section 20C Landlord and Tenant Act 1985 (LTA 1985) in relation to any costs which the Respondent landlord might incur in connection with these proceedings.

3. Directions were given on 31 July 2012 [21]. The dates for compliance with some of the directions were subsequently varied.

4. The application came on for hearing before us on 12 November 2012. Mr Dherani represented the Applicants and Mr Murch of counsel represented the Respondent.

Neither party called any evidence but both representatives made submissions to us.

The leases of flats 4 and 6 provide two separate service charge schedules as follows:

Residents Expenditure	– Schedule A	16.50%
Building Expenditure	– Schedule B	13.20%

The Applicants who are the lessees of flats 4 and 6 sought to vary their leases so as to reduce the Schedule A percentage down from 16.50% to 11.00%.

Those Applicants had not addressed the Schedule B percentage and claimed they were unable to do so until they had had the opportunity to study a sample lease of a 1 bedroom flat (flats 4 and 6 are 2 bedroom flats).

5. Further directions were given to requiring the Respondent to supply Mr Dherani with a sample copy of a lease of a 1 bedroom flat and for him to file and serve written submissions on the Schedule B variation sought and for the Respondent to file and serve representations in answer. The dates for compliance with those directions were subsequently varied. At the hearing the Tribunal informed the parties that they proposed to determine the application on the basis of the oral submissions made at the hearing and the written representations proposed to be filed and served pursuant to the further directions. The parties were reminded that at any time before the application was determined they may request a further oral hearing.

6. In response to the further directions the Respondent has provided us with a copy of the lease of flat 1. This provides the service charge percentages are as follows:

Residents Expenditure	– Schedule A	8.50%
Building Expenditure	– Schedule B	6.80%

7. The Applicants have filed representations set out in an email dated 20 December 2012. On the premise that Flat C should be brought into account (a position which the Respondent does not dispute) the Applicants contend for Building Expenditure – Schedule B contributions as follows:

Flat 4	11.76%
Flat 6	11.76 %
Flat B	11.76%

8. The Respondent has filed representations in answer dated 9 January 2013 in which it contends for a Schedule B contribution of 13.21% for flats 4 and 6 and no change to the 'fair and proper proportion' for flat B,

but if a fixed proportion was to be allocated to Flat B then it contends for 11.93%.

9. The Tribunal has not received any request for a further oral hearing.

The background facts not in dispute

10. Bedford House was originally built circa 1926. Since then it has been adapted to comprise a number of units. Prior to December 2001 it comprised 8 flats – a mix of 1 bed room flats and 2 bed room flats (flats 1-8) plus two office units. In or about 2001 the two office units were adapted and converted into two 2 bedroom flats – that is to say flats A and B. They are both located on the basement and ground floor levels. Also at about that time a detached bungalow (known as flat C) was created in the garden and has been brought into the service charge regime by the Respondent. All of the flats (save for flat C) have been let on long leases for terms of 125 years from 25 December 1986.

11. The leases of flats 1-8 provide fixed percentage contributions to Schedule A and B as noted above. The leases of flats A and B do not specify a fixed percentage contribution or make reference to Schedule A or B; but simply have one proportion – namely *"a fair and proper proportion of the Lessor's expenditure as provided in the Fifth Schedule hereto".* We were told that flat C has not been sold off on a long lease and the property is let by the Respondent on the terms of an assured shorthold tenancy. We were also told that the Respondent is willing to bear a fair and proper proportion of service charge expenditure attributable to flat C.

12. On 19 August 2002 the Respondent was registered at the Land Registry as proprietor of the freehold interest. It appears to have abandoned the Schedules A and B referred to in the eight original leases. Annual service charge accounts prepared by the Respondent make no reference to Schedule A or B; there is simply one account of all relevant expenditure. Mr Murch had not been informed by his client why this had happened. There was speculation that the need for two schedules arose because at one time two of the units were let as offices, perhaps with direct access off the street so that the commercial tenants contributed a service charge referable to the whole building but did not contribute to the common parts enjoyed exclusively by the residential units. It appears that 100% of Schedule A expenditure and 80% of Schedule B expenditure was shared between the original 8 residential units. The balance of 20% of Schedule B was presumably picked up by the 2 commercial units. With the conversion of the two commercial units into two residential flats the original scheme was no longer required. Evidently the view was taken that there should be one schedule of expenditure with all eleven flats contributing to the costs incurred.

13. Since about 2002 the Respondent has sought to recover contributions based on a new scheme it has drawn up. This appears to have been an informal scheme and no deeds of variation have been executed by any of the lessees concerned. Evidently this new scheme is acceptable to some lessees, but not to the Applicants.

14. Flats 1 - 8 in the original development comprised four 1 bed room flats (of equal size) and four 2 bed room flats (of equal size). Thus of the Schedule A expenditure the four 1 bed room flats contributed 34% of the total Appendix A expenditure and the four 2 bedroom flats contributed 66% of the total Schedule A expenditure. The four 1 bed room flats contributed 27.20% of the total Schedule B expenditure and the four 2 bed room flats contributed 52.80% of the total Schedule B expenditure. These are ratios of 1:1.941 in both cases.

15. The scheme presently operated and proposed by the Respondent is based on floor areas. Mr Murch said that sample measurements were taken for the eight original flats and flats A, B and C were measured internally. Mr Murch had not been told whether the RICS Code of Measuring Practice 6th edition had been adopted and he had not been provided with details of any of the measurements taken. The measurements adopted by the Respondent are not agreed by the Applicants.

16. In the result the leasehold structure of the building and the service charge regime now operated/proposed by the Respondent is as summarised in column 6 of the attached Appendix 1. The Applicants' rival proposals are set out in columns 7 and 8.

17. There have been issues between Mr Dherani and the Respondent about the services provided, the cost of some services and the service charges levied. In 2008 an application pursuant to section 27A LTA 1985 was before a Leasehold Valuation Tribunal and evidently that Tribunal recommended the parties try and agree a workable framework and suggested that floor area might be an appropriate method to adopt to fix the proportions payable.

18. Mr Dherani has issued a further application under section 27A LTA 1985. That application has been stayed pending the outcome of the present application.

19. This Tribunal plainly has jurisdiction to entertain the section 35 LTA 1987 application as regards varying the leases of flats 4, 6 and B. The Respondent has not issued a section 36 cross application. The Applicants have also made an application under section 37 LTA 1987, but that application is made by only three of the lessees. There are eleven residential flats of which ten are subject to long leases. Section 37 provides for applications made by a majority of long lessees. In the case of a development of more than 8 leases the application may not

be opposed by more than 10% and at least 75% of the total number of parties must consent to it.

20. The Applicants' three flats are shown coloured in yellow on Appendix 1. The leases of three flats are held by a company associated with the Respondent and controlled by the Respondent; these are shown coloured green on Appendix 1. There is no lease of Unit C but this unit is controlled by the Respondent. The Respondent as landlord is also constituted one of the parties – see section 37(6)(b). Thus with eleven units plus the landlord there are, effectively, twelve parties. The Respondent represents or controls five of the twelve parties. There was no evidence before us as to the view taken by the lessees of flats 2,5,8 and A, but if all four supported the Applicants, the Applicants will still fall well short of meeting the criteria set out in section 37(5). Mr Dherani accepted that the section 37 application was doomed to fail and it was withdrawn. Indeed with the Respondent controlling five of the twelve parties the remaining seven lessees will never be able get a section 37 application off the ground.

Relevant lease provisions

21. Clause 5(1) of the eight original leases is a comprehensive covenant on the part of the landlord to keep the development insured, in good repair and decorative condition and to provide services as therein set out [68].

22. The service charge regime is set out in the Fifth Schedule [83]. From paragraph 1 it was clearly intended that the Residents Expenditure (Schedule A) and the Building Expenditure (Schedule B) was together to comprise the cost to the landlord of providing and maintaining the insurance and services mentioned in clause 5(1) of the lease. All of the expenditure was to be Schedule B save that Schedule A expenditure was limited to:

"... the costs of repair and decoration maintenance lighting and cleansing of the halls passages staircases comprising the internal common parts of the Building and the costs of any rates taxes assessments and outgoings from time to time payable in respect of the same ...".

23. Now that the office units have gone and all eleven units are residential it appears the Respondents strategy is that Schedule A is now redundant and that all expenditure can properly fall under Schedule B.

24. The lease of flat B is at [37]. The leases of flats A and B do not differentiate between Schedules A and B. The landlord's covenants are set out in the Fourth Schedule [50] and the services to be provided are set out in the Fifth Schedule [52]. In broad terms these services are to the same effect as the original 8 leases. Neither of the parties sought to draw any distinction between the two forms of lease employed. The tenant's covenants are set out in the Third Schedule [49]. Paragraph

27 imposes an obligation to pay the Service Charge. The Service Charge is defined on [37] as being:

"a fair and proper proportion of the Lessor's expenditure as provided in the Fifth Schedule hereto"

The Respondent's submissions

25. Mr Murch commended the approach of sharing expenditure by reference to floor area on the basis that it reflects the extent of the building occupied by each unit. He submitted it was a well-recognised method and it was one suggested by the LVT in the 2008 application.

26. If all expenditure is to be Schedule B expenditure it can be seen from a comparison of columns 4 and 6 of Appendix 1 that there is virtually no change to flats 2,4,6, and 8 and a modest reduction for the smaller 1 bed room flats numbered 1,3,5 and 7. Mr Murch said that his instructions were that the new 2 bed room flats, A and B, were smaller than the original four 2 bed room flats hence the proportions attached to them was slightly less.

27. Mr Murch submitted that there should be no variation to the lease of flat B. That lease had been drafted using the flexible and common 'fair and proper proportion' basis and the proportion of 11.93% allocated by the Respondent was well within such a definition and very close to the 11% proposed by the Applicants, which, he suggested, was not a huge difference in cash terms.

28. Mr Murch said that section 35 offered the opportunity of a clean sheet which was appropriate given the addition of three new residential flats all contributing to the totality of expenditure on the development.

The Applicants' submissions

29. Mr Dherani submitted that the original 34:66 ratio scheme set out the share of the expenditure as between the then four 1 bed room flats (34%) and the four 2 bed room flats (66%). He said that was the bargain struck at the time and that was what he bought into when he took an assignment of the lease of flat 6. He submitted that it would be wrong and unfair to re-write the original contract to his disadvantage.

30. Mr Dherani recognised that the conversion of the two commercial units and the creation of flat C requires a re-adjustment but he said it should reflect the original bargain or scheme and should not amount to a quite different basis of approach, even if one commonly employed. He urged that the re-adjustment be shared equitably. He also submitted that if his share of the service charge was unfairly high it would have an effect on his ability to sell his investment. He claimed that the variation proposed by the Respondent prejudiced him and he commended the Applicants' proposals as being fair.

31. Mr Dherani recognised that in 2008 the LVT had suggested a change to a floor area basis but he emphasised this was only a suggestion. The Respondent was told to try and agree a new basis with the lessees. Mr Dherani was critical of the Respondent for seeking to impose changes on the lessees and asserted that the Respondent had not tried to reach an agreement. He said the floor areas proposed by the Respondent had always been in dispute. He also disputed the accuracy of the measurements adopted by the Respondent.

Discussion and reasons

32. We were satisfied, indeed it was not in dispute, that the relevant criteria set out in section 35(2)(f) LTA 1987 was met such that we had jurisdiction to vary the leases of flats 4 and 6.

33. As regards Flat B the position is different. The lease as drafted adopts a common and well used formulae of 'fair and proper proportion'. That is perfectly workable. If a landlord were to adopt an unfair or improper proportion, that could be the subject of a challenge on a section 27A LTA 1985 application. We saw no compelling reason to vary the terms of this lease so as to adopt a fixed proportion. We therefore decline to do so.

34. As to flats 4 and 6 we accept that consequent upon the conversion of the office accommodation into residential units the need and reasoning for Schedules A and B has become redundant so that all relevant expenditure should fall under Schedule B. We accept the Respondent's case on this point. With the addition of two new flats A and B and the bungalow C making contributions to the service charges it is necessary to adjust the proportions payable so as to achieve 100% recovery for the Respondent landlord.

35. Neither party made any submissions to us as to the general approach we should adopt to the nature and extent of variations to the leases. LTA 1987 appears to give us a wide discretion. For example section 38(1) of that Act provides that if the tribunal is satisfied that the grounds on which the application was made are established to its satisfaction it *"may"* make an order *"in such manner as is specified in the order."* Further 38(4) of the Act uses the expression *'... or such other variation as the tribunal thinks fit'.*
The Respondent says that we are presented with an opportunity to scrap the original contractual scheme and move to a completely new scheme based on floor areas. We reject that approach. We consider it too radical, especially in the absence of any evidence that it is a fairer way to apportion the costs. The Respondent conceded that floor area is one of many ways of apportioning costs. As we have said above, no evidence was presented to us that the floor area approach was fair or the fairest or, indeed, fairer than other methods commonly adopted.

36. In the context of section 35 (2)(f) LTA 1987 it was held in *Morgan v Fletcher* [2009] UKUT 186 (LC) that the policy behind the statutory

provisions was to deal with two mischiefs. The first was where the aggregate of service charges amounts to more than 100%, thus giving the landlord a surplus over monies expended. The second was where the aggregate was less than 100% thus producing a shortfall which was likely to lead to a situation which fails to promote the proper maintenance of the block. It was suggested that a landlord unable to recover 100% of costs incurred would be unwilling to provide services and carry out repairs and maintenance. It was also suggested that each of those situations is avoided if the service charges payable aggregate to 100%. The judge observed that it is also desirable, or just as desirable, to avoid a situation where the contributions are unfairly disproportionate as between the tenants. But, the judge held that to be a mischief of a different nature to that contemplated by the promoters of the LTA 1987. He said the focus of the Act is whether the landlord makes a profit or has the incentive to maintain the block, rather than the question of fairness as between tenants.

37. In these circumstances we reject the submission that where, as here, the landlord has created new flats and thus the need to adjust the original contractual proportions payable, the landlord should take the opportunity to make a fundamental change to the original contracts and propose a new scheme on the sole footing that the proposed new scheme is fairer that the original scheme. Further the measurements adopted by the Respondent were in dispute. The cost to both parties of carrying out a proper measurement exercise and of resolving any dispute(s) which might arise are likely to be significant. This is another reason to reject the proposed scheme.

38. The authorities on the proper construction of instruments are to the effect that the court is to give effect to the express terms of the contract and must resist the temptation to re-write, re-draft or improve upon the terms used. If by mischance the words used, as properly construed, the contract does not say what the parties agreed and intended, the normal remedy for an aggrieved party is an action for rectification. Again the court will strive to find a form of words which will reflect what the parties had actually agreed. In doing that the court will again not seek to re-open the bargain or re-cast the terms agreed. This can be seen from the speeches in *Chartbrook v Persimmon Homes Ltd* [2009] UKHL 38, the observations made by Lord Neuberger in *Pink Floyd Music Ltd v EMI Records Plc* [2010] EWCA Civ 1429 and the speeches made in *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50.

39. In our judgment on an application to vary lease terms under section 35 LTA 1987 we should adopt a broadly similar approach. We should resist the temptation to re-write the agreement or impose what might be termed a fairer but different agreement. On the contrary, we should strive to try and keep as closely as possible to the original contractual scheme; to try and keep the nature and extent of the variations to the absolute minimum consistent with the objective of the promoters of the Act and the intentions of Parliament in ensuring the policy objectives

that the landlord does not achieve a recovery in excess of 100% and that the landlord has the incentive to maintain the block. To this extent we prefer the submissions made by Mr Dherani. However, Mr Dherani's arithmetic has gone awry a little and we cannot accept it.

40. The original scheme was broadly a 'bed-room weighting' scheme under which a one bed-room flat paid service charges of just under 52% of those paid by a two bed-room flat. To retain that proportion now that there are five one bed-room flats and six two bed-room flats, the arithmetic is that a one bed-room flat should contribute 6.008% of expenditure and a two bed-room flat should contribute 11.66%. This would achieve 100% recovery as follows:

5 one bed-room flats (incl flat C)	at 6.008%	= 30.04%
6 two bed-room flats	at 11.66%	= 69.96%
Total		100.00%

41. Of course, we can only vary the leases of the Applicants. We have decided not to vary the lease of flat B. We have decided to vary the leases of flats 4 and 6 as shown above. There was no section 36 cross application and thus we cannot vary any other lease. It may be however that the Respondent will adopt our approach as regards its own leases and we would expect the Respondent to try and seek a consensus with the remaining three lessees. We have shown our suggestion in column 10 of the Appendix to this Decision to show how 100% recovery might work.

42. Our order cannot be and is not retrospective. We consider that the variations we have determined should be given effect to at an appropriate and convenient time during the course of the current financial year as defined in the leases for the purposes of the service charge regime.

The section 20C LTA 1985 Application – limitation of landlord's costs of the proceedings

43. At the conclusion of the hearing we heard submissions on the application made under s20C LTA 1985 with regard to the landlord's costs incurred or to be incurred in connection with these proceedings. An order was sought that those costs ought not to be regarded as relevant costs in determining the amount of any service charge payable by the Applicants.

44. Mr Dherani submitted that the need to vary the leases came about by reason of the Respondent's predecessor in title carrying out works to adapt the commercial units into residential units and the creation of Flat C. The costs of varying the leases should thus be considered as part of the costs of such development and borne by the landlord. He also submitted that the Respondent had not sought to agree the variation

but had been dogmatic in imposing its preferred solution such that the Applicants were forced to come to the Tribunal.

45. The application was opposed. Mr Murch said that the Respondent had incurred costs in connection with the proceedings. He submitted that the Respondent was entitled to put those costs through the service charge. He relied upon clause 5(1)(e) at [70] and submitted that such costs were embraced within the expressions:
"... maintenance safety and administration of the Building ... the supervision and performance of the Lessor's covenants ... in and about the performance of the covenants and provisions of this Lease"

46. We preferred the submissions made by Mr Dherani. The need for the variation arose from the works carried out by the landlord, or rather the previous landlord. When acquiring the development in 2002 the Respondent will have been aware of the need to vary the service charge proportions. It seems to us that it would be patently unfair to expect the residential lessees to bear the consequent costs. Further we have rejected the Respondent's approach to change to major change to a floor area basis. We have concerns as to the general and implacable approach adopted by the Respondent.

47. We have decided to make an order under section 20C LTA 1985 because it is just and equitable to do so. In these circumstances we do not have to make a determination on the construction of the lease contended for by Mr Murch; indeed the authorities are to the effect construction of the lease is not appropriate when considering an application under section 20C. The argument having been made we observe that we have some reservations about the construction contended for by Mr Murch. It seems to us that the wording relied upon is not clear and unambiguous. Further the expenditure in question does not come about by reason of the administration or management of the building as it was at the time of the grant of the original 8 flats. It has come about by reason of the subsequent works decided upon by the then landlord to adapt the building yet further. The cost of the consequent adjustment to the service charge contributions is thus properly a cost of the project to convert the two commercial units into residential units and to construct the bungalow – flat C.

Reimbursement of Fees

48. At the conclusion of the hearing an application was made that we require the Respondent to reimburse to the Applicants fees of £300 paid by them in connection with these proceedings.

49. The application was opposed by Mr Murch.

50. Both parties deployed much the same arguments as those used in regard to the section 20C LTA 1985 application.

51. For much the same reasons as given above we have decided that it would be just and equitable to require the Respondent to reimburse those fees.

The law

52. Legislation relevant to this Decision is set out in the Schedule below.

John Hewitt
Chairman
22 January 2013

The Schedule

Landlord and Tenant Act 1985

Section 20C

(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 or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

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

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987

Section 35 Application by party to lease for variation of lease

(1) Any party to a long lease of a flat may make an application to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—
(i) the flat in question, or
(ii) the building containing the flat, or
(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease;

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(7) ...

(8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.

Section 36 Application by respondent for variation of other leases

(1) Where an application ("the original application")is made under section 35 by any party to a lease, any other party to the lease may make an application to the tribunal asking it, in the event of its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application.

(2) Any lease so specified—
(a) must be a long lease of a flat under which the landlord is the same person as the landlord under the lease specified in the original application; but
(b) need not be a lease of a flat which is in the same building as the flat let under that lease, nor a lease drafted in terms identical to those of that lease.

(3) The grounds on which an application may be made under this section are—
(a) that each of the leases specified in the application fails to make satisfactory provision with respect to the matter or matters specified in the original application; and
(b) that, if any variation is effected in pursuance of the original application, it would be in the interests of the person making the application under this section, or in the interests of the other persons who are parties to the leases specified in that application, to have all of the leases in question (that is to say, the ones specified in that application together with the one specified in the original application) varied to the same effect.

Section 37 Application by majority of parties for variation of leases

(1) Subject to the following provisions of this section, an application may be made to a leasehold valuation tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

(2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.

(5) Any such application shall only be made if—

(a) in a case where the application is in respect of less than nine leases, all, or all 0but one, of the parties concerned consent to it; or

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.

(6) For the purposes of subsection (5)—

(a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and

(b) the landlord shall also constitute one of the parties concerned.

38. Orders varying leases.

(1) If, on an application under section 35 , the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the [tribunal] [2] with respect to the leases specified in the application under section 36, the [tribunal] may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the

application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

(a) that the variation would be likely substantially to prejudice—

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to

effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the court considers he is likely to suffer as a result of the variation.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

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

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

1	2		3	4	5	6	7	8	9	10	
Flat	Lease Date		Schd A & Schd B Per Lease		R's Proposal		A's Proposal		Tribunal's Decision		
					Schd A	Schd B	Schd A	Schd B	Schd A	Schd B	
1	15.03.1996		8.50%	6.80%	0.00%	4.58%	6.80%	5.89%	0.00%	6.008%	
2	15.12.1987		16.50%	13.20%	0.00%	13.21%	11.00%	11.76%	0.00%	11.66%	
3	20.01.1988		8.50%	6.80%	0.00%	4.58%	6.80%	5.89%	0.00%	6.008%	
4	23.10.1987		16.50%	13.20%	0.00%	13.21%	11.00%	11.76%	0.00%	11.66%	
5	07.02.1989		8.50%	6.80%	0.00%	4.57%	6.80%	5.89%	0.00%	6.008%	
6	21.08.1987		16.50%	13.20%	0.00%	13.21%	11.00%	11.76%	0.00%	11.66%	
7	15.03.1996		8.50%	6.80%	0.00%	4.58%	6.80%	5.89%	0.00%	6.008%	
8	26.11.1987		16.50%	13.20%	0.00%	13.21%	11.00%	11.76%	0.00%	11.66%	
A	28.12.2001		N/A	N/A	0.00%	11.93%	11.00%	11.76%	0.00%	11.66%	
B	28.12.2001		N/A	N/A	0.00%	11.93%	11.00%	11.76%	0.00%	11.66%	
C	No lease		N/A	N/A	0.00%	4.99%	6.80%	5.88%	0.00%	6.008%	
			100.00%	80.00%		100.00%	100.00%	100.00%		100.00%	
	A's flats										
	R's flats										
	Suggested only										