Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Premises:	24 Oberon Woods, Beddgelert, Caernarfon LL55 4YW
References:	LVT/0037/11/14 and LVT/0038/11/14
Hearing:	24th February 2015
Order:	24th March 2015
Applicant:	The National Provident Life Limited
Respondent:	Mr Jayanti Chouhan
Tribunal:	Dr Christopher McNall (Lawyer – Chairperson) Mr David K Jones FRICS (Surveyor-Member) Mr Eifion Jones (Lay-Member)

ORDER

1. The Ground Rent in relation to the residential property known as and situate at 24 Oberon Woods, Beddgelert, Caernarfon LL55 4YW under the Lease dated 4 July 1979 is £50 (fifty) per year.

2. The Respondent is not entitled to the sum of £7336.98, or to any other sum under Schedules 6 or 7 of the Lease dated 4 July 1979 (except insofar as the same relate to Ground Rent).

3. The Respondent's conduct having been unreasonable, the Respondent shall pay the Applicant's costs of and incidental to the Applications in the assessed sum of £500.

4. The Respondent shall also pay the Applicant's fees of the Applications, in the sum of £400.

5. The sums, coming to £900, stated in Paragraphs 3 and 4 of this Order, are to paid by the Respondent to the Applicant by no later than 14 (fourteen) days of service of this Order upon the Respondent.

6. Pursuant to section 20C of the Landlord and Tenant Act 1985, the Respondent shall not be entitled to recover from the Applicant any of the costs incurred by him in connection with these Applications, and these are not to be regarded as relevant costs to be taken into account

in determining the amount of any service charge payable by the Applicant.

REASONS

1. This is our Decision and Reasons following a hearing which took place in Caernarfon on 24th February 2015. The applicants were represented by a solicitor, Mr Jonathan Holmes of Robertson's solicitors in Cardiff. The respondent, Mr Chouhan, appeared in person.

2. At the beginning of the hearing, the Respondent, when asked by the tribunal, indicated that he had not received the hearing bundle which had been provided to the Tribunal and its members by the Applicants in advance of the hearing. Those bundles had been received by the Tribunal at its office on 18th February 2015. Mr Holmes informed the Tribunal that he had sent a copy of the bundle by first class post to the Respondent on 17th February 2015. Mr Holmes showed us a copy of the cover letter. Mr Holmes pointed out to the Tribunal that the documents contained in the bundle had all previously been provided to the Respondent, or indeed were documents, such as various letters, which had come from the respondent personally. Mr Holmes' witness statement had been sent to the Respondent by first class post on 10th February 2015. Mr Holmes had also sent the Scott Schedule to the Respondent. The only document contained in the bundle which had not been circulated earlier was the two page skeleton argument at the end of the bundle. However, this was a document which simply summarised what had already happened in the case and did not contain anything new, whether in terms of law or of fact. Despite this, the Tribunal offered the respondent the opportunity to take some time to consider that skeleton argument, if he wished. He did not wish to do so.

3. The Respondent said that he was not legally represented and therefore was in a very disadvantaged situation. He said that he had tried to instruct a specialist solicitor, but he had not been able to find anybody to represent him who was properly qualified in these matters. He said that he had found, at the last minute, a firm in Birmingham (which he did not name) who said they could help, but that no-one from that firm could come to make representations as they had other matters to deal with. He said that he had tried between 20 and 30 solicitors but that he could not find a firm of solicitors willing to help him. We find all that somewhat surprising. Although it is true that we are a specialist jurisdiction, the matter of the recovery of sums said to be due under a written lease is, in our view, relatively straightforward. Many litigants appear before this Tribunal, representing themselves, and the Tribunal does its best, consistently with our Rules, to avoid undue formality, and to ensure that all cases are dealt with fairly.

4. When asked by the Tribunal if he was in fact requesting an adjournment, he said that he was. The Tribunal retired in order to consider this application. We decided to refuse the application for an adjournment. Both parties were present. The matter had been ongoing for several months and the Respondent had already had ample opportunity to find representation, which should not have been difficult. Moreover, it was the Respondent personally who, in a series of letters, the first dated 22nd March 2014, had demanded the sum of £7336.98 which formed the subject matter of this dispute. It did not seem to the Tribunal that any useful purpose would be served by an adjournment. An adjournment would only cause significant further costs to be incurred and would only introduce significant further delay to the proceedings. Moreover, the matter of legal representation had already been raised and dealt with in correspondence.

The Applications

5. The Tribunal then proceeded to deal with the applications. The first application was made on a form LVT6 dated 14th November 2014. It was an application, under sections 27A and 19 of the Landlord and Tenant Act 1985, to determine the liability to pay and reasonableness of variable service charges. The items in respect of which the applicant was seeking a determination were ground rent, insurance, and third-party liability insurance. The application refers to a demand dated 22nd March 2014. The amount in dispute was £7336.98.

6. The second application was made on a Form LVT2, also dated 14th November 2014. It was an application made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to liability to pay and reasonableness of a variable administration charge. The grounds for this application are set out in Box 5 of the form and say that the respondent was demanding payment of £300 in relation to four letters which he had written, being £75 for each of four letters dated 22nd March 2014, 28th May 2014, 20th June 2014, and 12th October 2014. The application went on to say that despite requests, the respondent had refused to provide an explanation as to his entitlement to levy such administrative charges.

7. On 15th January 2015, the Procedural Chairman gave Directions, including a Direction that the two applications were to be heard and determined at the same time.

The Background

8. 24 Oberon Woods ('the Property') is a leasehold property carved out of a freehold title registered with Land Registry under title number CYM81726. The Respondent was registered as sole proprietor of that freehold title on 24th September 2004.

9. The Applicant acquired the leasehold interest in the Property, which is registered with Land Registry under title number WA 962393, on 26th January 2000 from Mr James Payne and Mrs Olivia Payne under the terms of an equity advance plan. Upon completion of the transfer, the applicant granted Mr and Mrs Payne an interest for life by way of underlease. Mr Payne passed away on 17th January 2005 and Mrs Payne passed away on 15th February 2013. Following the death of Mrs Payne, the applicant marketed the property for sale.

10. On 12th March 2014 a letter was sent to the Respondent, as sole registered proprietor of the freehold title, asking him to provide up-to-date ground rent receipts and confirmation of any notice fees payable on completion.

11. The Respondent's response came by way of letter dated 22nd March 2014. That letter is word-processed, appears beneath the respondent's letterhead and is signed by the respondent. The letter also gives a reference. The Respondent informed the Applicant of the following alleged "*non-payments for the property"*: ground rent, insurance and third-party liability insurance under the lease dated 25th March 1972. The Respondent ended by saying: "*I will be looking for the sum of £7336.98 on completion*". That is the demand which lies at the root of this present dispute.

12. That letter did not provide any explanation or breakdown as to how the sum of £7336.98 had been arrived at. Nor did that letter make any reference to any attached breakdown or schedule. On 14th April 2014, the Respondent chased the Applicant's solicitors, asking if they would be so kind as to update him regarding his letter of 22nd March 2014. On 22nd May 2014 the Applicant's solicitors wrote to the Respondent, further to his letters dated 22nd March and 14th April 2014, and noting the sum which he had said was required on completion of the sale of the property. The Applicant's solicitors asked the Respondent to confirm and provide evidence as to how the sum of £7336.98 was quantified. They also required a copy of the previous insurance schedules and requests for payment. We find those requests by the applicant to have been wholly reasonable.

13. On 28th May 2014 the Respondent wrote back. That letter referred to the letter of 22nd May 2014 and said that the Respondent wished to inform the Applicants that the complete schedule with breakdown of outstanding charges had already been sent to them. The Respondent went on to say that he looked forward to payment within seven days. If not, he said '*further action will be taken'* although he did not specify what 'further action' he had in mind. Again, that is a letter written on the Respondent's letterhead and signed by the Respondent. The response on 9th June 2014 thanked the Respondent for his letter of 28th May 2014, but said that the Applicant was still awaiting a complete schedule and breakdown of the outstanding charges.

14. On 28th June 2014 the Respondent again wrote to the Applicant's solicitors. He said that a schedule and complete breakdown had been sent to the Applicants on 22nd March 2014. It said that he hoped that clarified his position and he enclosed an invoice in relation to the property. He said that he expected to receive full payment within 14 days and was not going to enter into any lengthy correspondence with the Applicant. He said that the Applicant had ignored their obligation to pay the ground rent, insurance and third-party liability insurance under the lease. We find that letter did not clarify the Respondent's position.

15. Even if the Respondent genuinely believed that a breakdown had been sent in March, he did not see fit to send another copy, despite two requests.

16. The Respondent's letter of 28nd June 2014 did however attach an invoice. That invoice was dated 22nd March 2014. However, rather puzzlingly, that invoice purported to relate to three letters: one dated 22nd March 2014, one dated 28th May 2014, and one dated 28th June 2014. That is, the date on the invoice did not appear to be correct. As far as the Tribunal is aware, that was the first occasion on which the Respondent had indicated that he expected to receive the sum of £75 in relation to each short letter he was writing to the Applicant's solicitors.

17. On 3rd July 2014 the Applicant's solicitors wrote to the Respondent stating, that for the avoidance of any doubt, the Applicant denied any liability on the part of the Applicant in respect of the invoice. The Applicant went on to complain, as it had now done on several previous occasions, that the Respondent had not provided any evidence as to how the sum of £7336.98 had been quantified. The Applicant, as on several previous occasions, requested copies of the previous insurance schedules and requests for payment. Those were entirely reasonable requests. The Applicant also drew the Respondents attention not only to the Limitation Act 1980 but also to the Commonhold and Leasehold Reform Act 2002 and the regulations made under it. That was a fair approach to take.

18. Thereafter, and perhaps unsurprisingly, the matter was passed to the litigation department of the Applicant's solicitors. On 10th October 2014, Mr Holmes wrote to the Respondent, noting - correctly - from the file that the Applicant had on numerous occasions in the past requested an exact breakdown of how the £7336.98 was said to be due and owing. He noted that the Respondent's letter incorrectly asserted that a full breakdown had been provided under cover of his letter of 22nd March 2014. The letter went on to insist that the Respondent provided the Applicant's solicitors within seven days of the date of the letter the following:

"1. A full breakdown of ground rent that is said to be due and owing including reference to the amounts due on the rental period;

2. A full breakdown of the insurance and third-party liability insurance said to be due and owing, to include copies of the relevant insurance schedules and premiums reach insurance year;

3. A full breakdown of all administration charges that are said to be due and owing together with copies of the relevant invoices relating to those administration charges"

19. That letter went on to say that if the Applicant's solicitors did not hear from the Respondent with all of the above information within seven days then the Applicant would have no alternative other than to refer this matter to this Tribunal. It seems to us that was an entirely fair, reasonable and proportionate stance to have adopted.

20. The response came on 12th October 2014. It was in a letter, again on the Respondent's letterhead, and again signed by the Respondent. That letter simply stated that the Respondent had already provided the Applicant with all the details requested. That letter did not provide any breakdown of ground rent said to be due and owing. Nor did that letter provide any breakdown of the insurance and third-party liability insurance said to be due and owing. Nor did the Respondent provide any copies of the relevant insurance schedules and premiums each insurance year. Finally, the Respondent did not provide any breakdown of the administration charges, nor did he provide copies of any relevant invoices. However, what we find to have been the Respondent's complete and comprehensive failure in these regards, the Respondent concluded his letter with the threat that if the sum sought was not paid to him within seven days, he would start legal proceedings against the Applicant. The letter of 12th October 2014 attached a further invoice in which a further £75 was charged for that self-same letter.

21. On 16th October 2014, the applicant's solicitors responded that they were disappointed at the respondent's refusal to co-operate in the matter. That criticism was entirely fair. The Applicant had been extremely patient and forbearing with the Respondent. We consider that the Respondent was not co-operating, in any sense of the word. The Applicant's solicitors went on to dispute that the money claimed by the Respondent was in fact due and payable and went on to invite the respondent - as he had threatened - to instigate legal proceedings against the Applicant in relation to the matter. In any event, the Applicant's solicitors confirmed that as per their previous letter they were in the process of preparing an application to the Tribunal and intended to submit the same at the end of October.

22. In fact, the Applicant took a little longer, but the two applications were issued on 14th November 2014. The Applicants stated that their applications needed to be dealt with quickly, and invited the Tribunal to deal with the applications as a matter of urgency. The Applicants stated that the matter had been ongoing since March 2014, which was true, and that the Applicants were looking to sell the property. They said that any transaction was proving impossible whilst there was an ongoing dispute with the Respondent. That is completely understandable. Whether this was his intention or not, the Respondent was holding the Applicant to ransom, since it was reasonable to suppose that he would not execute any documents, or co-operate in any sale, unless paid the sum he was demanding.

23. Directions were given by the Procedural Chairman in a letter dated 2nd December 2014. On 18th December 2014 the Respondent wrote to the Tribunal seeking an extension of four months to respond to the letter. That application was objected to by the Applicants. In their letter dated 7th January 2015, the Applicants said that they had been requesting information in respect of the alleged outstanding service and administration charges since at least March 2014, and they failed to see why the Respondent required a further four months to provide the information. On 15th January 2015, the Procedural Chairman considered the matter and refused the Respondent's application for an extension of time. The order of 15th January 2015 carried a prominent warning that it was important that the Directions were complied with. It stated that any failure to comply with the Directions could result in the Tribunal being unable to consider important evidence or documents, which in turn could prejudice a party's case.

24. On 26th January 2015 the Respondent again wrote to the Tribunal, taking issue with the Tribunal's refusal of an extension of time. That letter was put before the Chairman of this panel, who, considering the file, and that letter, refused the Respondent's application for permission to appeal paragraph 1 of the order of 15th January 2015. The reasons given for that refusal were as follows: (i) the decision appealed from was a matter of case management and furthered the overriding objective; (ii) the decision was well within the ambit of the Procedural Chairman's discretion; and (iii) no grounds of appeal were advanced except to the matters raised in the Respondents earlier letters, which had already been considered.

25. Further correspondence was received from the Respondent which sought to challenge the Tribunal's orders on a number of bases, including the Respondent's work commitments (which were otherwise not specified), the need to seek a solicitor willing to take this type of work, the Respondent's rights under Articles 8 and 14 of the European Convention on Human Rights, and the Respondent's rights under Protocol 1 Article 1 of the same convention. Those matters were subsequently dealt with, before the hearing, by the President of the Tribunal.

The Lease

26. The starting point for any analysis of the Respondent's rights in relation to the property must begin with the lease. It is dated 4 July 1979 and is for a term of 999 years from 25 March 1972. Clause 1 states that the yearly ground rent is £50, payable in equal half-yearly portions. We note the Respondent's accurate reference to the term and commencement date of this lease in his letter of 28th June 2014. The Respondent did not dispute that he had written these letters. As such, we consider that the Respondent, at all material times, has had access to a copy of the lease, and has read it.

27. The relevant provisions dealing with insurance are to be found in the Sixth Schedule. This is the schedule which deals with lessor's expenses. Paragraph 6 of that schedule provides that the lessor is obliged to insure "*those parts of the property (excluding the demised premises) against loss or damage by such risks as the lessor shall think fit in the full value thereof from time to time… Such insurance to include 10 per centum of the sum insured for architect's and surveyor's fees to include the cost of demolition and clearing of buildings*" Clause 16 of that Schedule provides that an additional 15% shall be added to the costs and expenses, outgoings and matters referred to in the preceding paragraphs of the schedule for administration expenses.

28. The property which is the subject matter of the present dispute is one of 36 properties making up the Oberon Wood Estate, which lies behind the Royal Goat Hotel in Beddgelert. The landlord is obliged to ensure the common parts of that housing estate, and the tenant of this property is required, under the terms of the Seventh Schedule of the lease, to pay 1/36th of that cost.

The Evidence

29. In support of the application, Mr Holmes relied on his witness statement dated 10th February 2015, and the exhibits to it, including the Scott schedule, the lease, and the correspondence already referred to.

30. In his oral submissions, he complained that the Respondent had never provided any breakdown of the sum which had originally been demanded in March 2014. He also complained that the Respondent had at no point made any demand which complied either with the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007 (S.I. 2007/3162) or The Service Charges (Summary of Rights and Obligations, and transitional provisions) (Wales) Regulations 2000 (S.I. 2007/3160).

31. He complained that, whenever pressed, the Respondent simply reverted to the formula that he was owed £7336.98. He complained that the Respondent had never provided 'any breakdown, rationale, or explanation' for that demand. Mr Holmes correctly pointed out to us that the ground rent due and payable under the lease is £50 per year and not £25 per year as stated by the Respondent.

32. Mr Holmes also drew our attention to documents, appearing at pages 64 and 66 of the bundle, and previously provided to the Respondent, which indicate that the insurance for the common parts charged to Mr and Mrs Payne during their tenancy was £14.89 in 2001 and £13.33 in 2002. In 2003, the then-landlords, a Mr and Mrs Rice, obtained insurance from Axa Insurance for the whole estate owned by them, for a premium of £288.75, meaning that the sum payable in that regard by the then-tenant of this property (if 1/36th) will have been £8.02.

33. On the basis of these figures, Mr Holmes submitted that it was impossible to work out how a sum of £7,336, or indeed any sum even remotely approaching that figure, could properly have been arrived at by the Respondent.

34. In response, the Respondent said that he was not qualified to make any comment on the matter. He said that he had an agent (who he named, in response to questioning by the Tribunal, as a Mr Ahmed Maz in Birmingham) looking after the matter. He did not provide any other details of Mr Maz. He did not produce any correspondence passing between himself and Mr Maz. He initially said the agent was just telling him to write and what to write. He said that the figure of £7336.98 had come from the agent and that he was relying on him. However, he told us that the agent, although based in Birmingham, was not in this country, but had been abroad for a considerable period of time, which may have been up to one year, due to family problems. He then went on to say that the figure had not been given to him by Mr Maz, but 'by a girl in the agent's office'. In response to questions from the Tribunal, he accepted that he did not know how that figure had been calculated, and he accepted that the figure could be wrong. Critically, he accepted that he had never seen any figures at all on paper.

35. It seems to the Tribunal that that was an extremely important concession and piece of evidence in this case. Accepting the Respondent's oral evidence, given to the Tribunal, that he had not seen any figures at all on paper, it is impossible to see how the Respondent can ever truthfully have asserted, from March 2014 onwards, that he had provided a breakdown. A 'breakdown', in the ordinary sense of the word, is a list or itemised explanation giving detail of how this sum is arrived at. A statement of the lump sum is not a breakdown. If Mr Chouhan had never himself seen anything in writing, then he cannot have seen any breakdown and he cannot have provided any breakdown to the Applicant's solicitors. Therefore, and as

Mr Chouhan must have known from the very beginning, the letters in which he repeatedly stated that a breakdown had been provided, were simply not truthful. We therefore formed serious doubts as to Mr Chouhan's credibility.

36. In response to questions from the Applicant's representative, the Respondent did not provide any explanation as to why he had never made any mention of an agent previously. Indeed, not only had the Respondent never mentioned the existence of any agent in his letters *to the Applicant*, he had never mentioned the existence of any agent in any of his letters *to the Tribunal*, including those letters, already referred to, in which Mr Chouhan repeatedly sought an adjournment. If Mr Chouhan had an agent, and if he was genuinely reliant on that agent, as he said he was, that omission is (to say the least) a striking one.

37. Instead, Mr Chouhan sought to accuse the Applicant's solicitors of taking advantage of the situation. He said that the Applicants had come down on him 'like a ton of bricks', knowing that he was not a solicitor. He said that he had hoped it could be sorted out without coming to the Tribunal, and that he had tried to phone the Applicant's representatives 'two or three times' to review and explain. In relation to the administrative charge, namely £75 per letter, he said that sum was for his work. However he did not know whether he was entitled to that sum, and accepted that he might not be entitled to it. He said that he did not consider this figure to be extortionate, and that his agent charged him £175 per hour plus VAT. However, we were not shown any evidence of that. We note that the agent cannot have been charging in relation to the correspondence from March 2014, since all that correspondence came from the Respondent. We do not know what services, if any, the agent actually ever provided.

38. In response to questions from the Tribunal, the Applicant's representative completely denied being aggressive. The matter had originally been dealt with in the conveyancing department, and had only been passed to the litigation department when his conveyancing colleagues had failed to obtain the information requested. Mr Holmes pointed out that it was Mr Chouhan who had in fact initially threatened to commence legal proceedings, and not the Applicant. Moreover, the Applicant had invited the respondent, if he considered he was genuinely entitled to over £7000, to bring a claim for the same. The Applicant's representative said that no messages from the Respondent had ever been passed to him either by reception or by his secretary. He had not spoken with the Respondent on the phone. We believed Mr Holmes and accept his evidence in these regards, and we reject the Respondent's evidence. We find that these applications had been brought only as a last resort, and after the Applicant's solicitors had taken all reasonable steps, over a period of several months, to obtain the information which they required, wholly reasonably, from the Respondent, and which, if produced, could have supported his claim.

In contrast to the Respondent's allegations, we find that the Respondent's letters were aggressive and uncompromising and, insofar as they repeatedly asserted that a breakdown had been provided, were simply untruthful.

39. We find that the respondent, despite numerous requests, has never provided any evidence or breakdown as to how the sum of £7336.98 was calculated. The sum demanded cannot sensibly or realistically be reconciled with any of the sums which are known to have been due and payable under the lease in the past. For example, if the insurance was approximately £15 per year, then the sum demanded equates to approximately 500 years' worth of insurance. Given that the ground rent is £50 per year than the sum demanded equates to approximately 150 years' worth of ground rent. The Tribunal simply cannot divine any arithmetical process which could lead to a figure well in excess of £7,000.

40. We find that the Respondent did not know how that figure had been arrived at. The Respondent accepted, in response to a question from the Tribunal, that he had no evidence to prove the figure. We find it startling that the Respondent, even on his own evidence, if true, should have accepted, without any question, a figure so grossly out of proportion to the sums which were otherwise properly payable under the lease. We have real doubts as to whether the Respondent can ever have genuinely believed, even if told by or behalf of an agent, that he was entitled to several thousand pounds.

41. Ultimately, we were not convinced that the Respondent had engaged any agent. All the letters came directly from the Respondent. None of those letters made any reference to an agent. No mention of any agent was made before the hearing. There was no documentary evidence as to the involvement of any agent.

42. The invoices dated 22nd March 2014 and 12th October 2014 in relation to administration charges do not comply with the regulations. Even if the letters had been true, which (in asserting the provision of a breakdown) they were not, the sum of £75 for a short, un-informative, non-progressive, letter is manifestly excessive.

Conclusions

43. We find and declare that the ground rent due under the lease is £50 per year. We make no findings as to whether that ground rent is paid or up to date.

44. We find that the Respondent is not entitled to the sum of £7336.98 which he has demanded. We also find that he has not provided any evidence (even of an unsatisfactory or inconclusive character) that he is entitled to any sum at all under Schedules 6 or 7 of the lease.

45. We find that the Respondent is not entitled to the sum of £300 which he has demanded by way of administration charge. He has not complied with the Regulations. Moreover, and in any event, his entitlement to administration expenses is limited by Paragraph 16 of Schedule 6 of the lease. Given that he has not advanced any evidence that he has insured any parts of the property, then it must inevitably follow that is entitlement under Paragraph 16, as matters stand, is zero.

Costs

46. As to costs, the legal position is set out in Paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. The Tribunal has the power to award costs against a party who, in the opinion of the tribunal, has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

47. The Applicant said that the current applications had only come about as a result of Mr Chouhan's unreasonable behaviour. The Applicant said that the Respondent had refused to enter into meaningful correspondence and had left the Applicant with no alternative other than to apply for a determination.

48. We consider that a completely fair description of this case. The Tribunal considers that the Respondent has acted unreasonably in connection with the proceedings.

49. Firstly, we consider that it was unreasonable to repeatedly claim an entitlement to over £7,000 without ever setting out the basis for that claim. We find that to have pursued such a claim, aggressively and insistently, over the course of several months, without once being able to produce any evidence whatsoever in support of the claim, falls well within the definition of unreasonable conduct. The degree of unreasonableness is only heightened by the fact that the applicant had never, of his own admission, seen anything in writing.

50. Secondly, the Respondent completely failed to comply with any of the Directions which had been made by the Tribunal. On 2nd December 2014, the matter was reviewed by Procedural Chairman who ordered the Respondent to provide to the Tribunal and the Applicant a copy of (i) a complete breakdown of the sums claimed is due for ground rent insurance and administration charges amounting to £7336.98; (ii) the insurance schedules for each year that the Respondent was claiming insurance premium was outstanding, together with evidence same had been paid: and (iii) notices served on the Applicant which complied with the regulations.

51. On 15th January 2015 the Procedural Chairman again considered the matter and noted that the Respondent had not complied with the Directions which he had given in his letter of 2nd December 2014. The Respondent was ordered to reply to the Scott schedule. The

Respondent was also ordered to exhibit any documentary evidence or submissions which he wanted the Tribunal to consider in support of his position. The Respondent was also ordered, if so advised, to file and serve any witness statement. The Respondent did not comply with any of those Directions. The Respondent's failure to comply with any Directions, in and of itself, is unreasonable behaviour.

52. The Applicant invited the Tribunal to make an award in relation to each of the two applications which were made. No such application had been advanced on the papers. The Applicant's representative frankly conceded that the thought had occurred to him only shortly before the hearing.

53. It seems to the Tribunal that, if an application was to be made for two sets of costs, namely one set of costs in relation to each application, then that application should in all fairness have been made on the papers. Instead, it was made only at the Tribunal hearing. In those circumstances and given the absence of fair warning to the Respondent, we do not consider that it would be fair to deal with the application for costs as if it related to two applications.

54. Given the findings which the Tribunal has made above, the Tribunal considers it is wholly appropriate in the circumstances of this case to order that the respondent pay a sum towards the applicant's costs.

55. Mr Holmes informed us that he is a grade A solicitor and that his hourly rate is £217. He estimated that the time which he had spent on the matter, and which he had billed to his client, would amount to far in excess of £1,000. He had travelled for 4 1/2 hours to the hearing, had prepared the witness statement, and the bundle, and he had written correspondence previously referred to. We find that it was appropriate to have instructed a grade A solicitor, and we note that £217 is the guideline rate for a grade A solicitor in Cardiff. We accept and find that Mr Holmes will have spent a considerable period of time on these matters. We find and are wholly satisfied that the applicant's costs of the applications comfortably exceed £500.

56. Accordingly, we order that the Respondent pay the Applicant the sum of £500 in relation to its costs of the applications.

Fees

57. There were two applications. In relation to the application for determination of administration charge, the application fee paid was £50. In relation to the application for determination of service charge the application fee was £200. A hearing fee of £150 was also payable by the Applicant when the application was set down for hearing. Therefore, the fees in total come to £400.

58. The Tribunal also orders that the Respondent shall pay the Applicant the further sum of £400 by way of fees.

59. The Respondent will therefore pay the Applicant the total sum of **£900**. That sum shall be paid within 14 days of service of this decision on the Respondent.

Section 20C

60. The Tribunal is also invited by the applicants to make an order under section 20C of the Landlord and Tenant Act 1985.

61. The effect of such an order would be to debar the Respondent, as landlord, from recovering any part of the costs of these applications by way of service charge. Whilst we cannot find any provision in the lease which would permit the landlord to do this, we nonetheless consider, for the sake of completeness and the avoidance of any possible doubt, that we should make an order under section 20C as requested. The effect of this is that even if we are wrong as to our interpretation of the lease, the landlord nonetheless cannot recover any part of the costs of this exercise by way of service charge.

Closing remarks

62. At the conclusion of the hearing, the Respondent indicated that he did not consider that he had had a fair hearing. The Tribunal rejects that submission. The Respondent was given every opportunity to make any and all such submissions as he considered appropriate. He made submissions, and these were noted and carefully considered. The Respondent was also given the opportunity to ask the Appellant's representative any questions which he considered appropriate. He declined to do so, but the Tribunal did nonetheless explore with the Applicant's representative some of his evidence, especially where it was in conflict with that given by the Respondent.

63. In short, the Tribunal considers that these applications were dealt with fairly and justly, and that the Respondent was given every opportunity to present his case, not only on the day of the hearing but also in the several months leading up to it. We do not accept that the Respondent, as a layman, was not qualified to answer questions in relation to the sum which he personally had demanded on several occasions, and in respect of which he had threatened to commence legal proceedings.

Dated 24 March 2015

Dr Christopher McNall
Lawyer-Chairman