9831

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UF/LSC/2013/0074**
Property	:	**90, 92, 94, 96, 98 and 100 Finney Drive** **15, 18, 22, 24, 25, and 26 Wilks Walk** **Grange Park. Northampton NN4 5DT**
Applicants	:	**Miss K Lawrence** — **90 Finney Drive** **Mr R & Mrs P Cushing** — **92 Finney Drive** **Mrs P Gray** — **94 Finney Drive** **Mr J & Mrs R Evans** — **96 Finney Drive** **Mr M & Mrs A Martin** — **98 Finney Drive** **Ms A Eldin** — **100 Finney Drive** **Miss J Smith** — **15 Wilks Walk** **Mr R Bell** — **18 Wilks Walk** **Mr GS Banwait** — **22 Wilks Walk** **Mr V Patel** — **25 & 26 Wilks Walk**
Applicants' Representative	:	**Edward H Marston & Co Ltd**
Respondent 1:		**Regency Gate (Phase 2) Management Ltd**
Respondent 1's Managing Agent	:	**Residential Management Group**
Respondent 1's Representative	:	**Trevaskis Consulting (Mr I Thompson)**
Respondent 2	:	**Freehold Portfolios Limited (Landlord)**
Respondent 2's Managing Agent	:	**Simarc Property Management Ltd**
Date of Application	:	**23rd May 2013**
Type of Application	:	**A determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)** **To limit the service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)**

Tribunal : **Judge JR Morris**
Mr DS Brown ACIArb, FRICS
Mr DS Reeve MVO, MBE

DECISION

Decision:

1. The Tribunal determines that the following insurance premiums to be payable:

30th June 2009 to 1st July 2010	£11,978.13
30th June 2010 to 1st July 2011	£12,765.69
30th June 2011 to 1st July 2012	£12,765.69
30th June 2012 to 1st July 2013	£10,140.49
30th June 2013 to 1st July 2014	£9,801.29

2. The Tribunal make no order under section 20C of the Landlord and Tenant Act 1985

Reasons

Application

1. An Application was made on 23rd May 2013 for a determination as to the reasonableness and payability of the service charges incurred for the year ending 31st December 2008 to 2012 and to be incurred for the years ending 31st December 2013 and 2014 pursuant to section 27A Landlord and Tenant Act 1985.

2. Directions were issued on 29th July 2013 and amended on 12th September 2013. In accordance with Directions the bundles were provided for the Hearing on 25th November 2013. By the date of the Hearing the issues had been narrowed and are set out below.

Issues

3. The Applicants disputed the insurance costs. In particular the Development consists of 54 apartments of similar style and design which were held by the First Respondent until 2009 when 33 of these apartments were transferred to the Second Respondent. The Applicants are Leaseholders from the 33 apartments transferred to the Second Respondent. The Applicants state that the insurance premiums for the 21 apartments retained by the First Respondent have been significantly lower than those for the 33 apartments

transferred to the Second Respondent for the years following the transfer. As the apartments are comparable the Applicants submit that the insurance premiums should be the same or similar and contend that the insurance premiums charged by the Second Respondent are unreasonably high.

The Law

4. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

5. Section 18 Meaning of "service charge" and "relevant costs"
   (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
      (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
      (b) the whole or part of which varies or may vary according to the relevant costs
   (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
   (3) for this purpose
      (a) costs includes overheads and
      (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

6. Section 19 Limitation of service charges: reasonableness
   (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
      (a) only to the extent that they are reasonably incurred; and
      (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
   (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

7. Section 27A Liability to pay service charges: jurisdiction
   (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) *Subsection (1) applies whether or not any payment has been made.*
(3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

Description and Inspection of the Subject Property

8. The Tribunal inspected the Property in the presence of Ms C Williams for the Applicants, Mr Thompson for Respondent 1 and Mr Hoskins for Respondent 2. The Property comprises two buildings 92 – 100 Finney Drive and 15 – 26 Wilks Walk. Both buildings are part of a modern development of blocks of flats and houses.

9. 90 – 100 Finney Drive is part of a three storey building which contains a total of 18 flats numbered 66 – 100 (Evens). The building has three communal staircases each serving two flats per floor. 92 – 100 are around one of these communal staircases. The building is constructed of brick with a pitched concrete tile roof. The front elevation has a smooth render although the flank walls and rear elevation are of exposed brick. There are PVCu rainwater goods and PVCu double glazed windows and doors. To the rear of the building there is a car park.

10. 15 – 26 Wilks Walk is also a three storey building which contains a total of 12 flats. The building has two communal staircases each serving two flats per floor. The building is constructed of brick with a pitched concrete tile roof. There are PVCu rainwater goods and PVCu double glazed windows and doors. The rear entrances to the communal staircases are open. To the rear of the building there is a car park and bin store.

12. The Property is in generally good condition both externally and internally.

The Lease

13. A copy Lease was provided which it was agreed is common to the apartments of all the Applicants. The Lease is for a term of 155 years from 1st January 2004 at a ground rent of £125.00.The Lease is between Grange Park Developments Limited (the original landlord) (1), the Tenant (2), Barratt Homes Ltd (the Developer) (3) and Regents Gate (Phase 2) Management Company Limited (the Management Company) (4). In the Recitals to the Lease the Management Company has been incorporated for the purposes of managing and maintaining the common parts of the Building and the Estate Common Part. Under Clause 3 of the Lease the Tenants are to become members of the Management Company and so in effect the Tenants will through the Management Company manage the Development subject to

certain provisions. The Management Company will manage the Development funded by the Service and Management Charge paid by the Tenant.

14. The Lease has in effect two sets of charges. These are referred to in Clause 2 of the Lease under which the Tenant covenants to pay *the Service Charge and Management Charge more particularly described in the Seventh and Eighth Schedules.*

The Service Charge

15. The Tenant covenants to pay the Service Charge at clause 16.1.1 of the Fourth Schedule. The Part 1 of the Seventh Schedule sets out the provisions for the charging and accounting for the Service Charge with provision for the making of an Interim Charge and a balancing payment or credit at the end of the year. It also defines the Service Charge at paragraph 1.9 of the Schedule as being *the Tenant's Proportion of the amount of the Service Costs for each accounting period.* The Service Costs are defined at paragraph 1.10 of the Sixth Schedule and the heads of expenditure applicable to the Building are also set out.

16. Part 2 of the Seventh Schedule sets out further works and services which are part of the Service Charge and include:

INSURANCE
Insurance at all times in the joint names of the Landlord and the Management Company during the said term (unless such insurance shall be vitiated by any act or default of the Tenant) to their full-re-instatement value of the Buildings against loss or damage by fire lighting explosion earthquake storm or flood water damage riot civil commotion vandalism theft subsidence and/or heave and landslip aircraft property-owner's liability third party liability (including adequate amounts in respect of professional costs) and such other risks (if any) as the Management Company shall from time to time think fit in such insurance office of repute as is nominated from time to time by the Landlord in such sum as the Management Company shall for time to time think fit in the event of the Buildings being damaged or destroyed by any of the insured risks as soon as is reasonably practicable the laying out of the insurances monies in the repair rebuilding or re-instatement of the Buildings and in the event of the insurance monies being insufficient to make up the deficiency out of its own monies

The Management Charge

17. Clause 1 of the Lease defines:

"Management Charge" as *the annual contribution payable by the Tenant under the provisions of the Eighth Schedule which shall be such proportion of the Management Expenditure as shall be certified...by the Landlord or the Developer or the Management Company or its managing agents..*

"Management Expenditure" as *all costs and expenses including the costs of calculation certification and collection and if appropriate any professional and managing agents fees...incurred ... within any relevant Management*

Expenditure Year by the Landlord or the Developer or the Management Company in relation to any of the matters hereinafter mentioned in this part of the Schedule in connection with the Estate Common Parts

17. Clause 3.3 of the Lease contains the Tenant's covenant *To pay to the Management Company the Management Charge as applied to the Demised premises.* The heads of expenditure applicable to the Estate are set out. The Eighth Schedule

Attendance at the Hearing

18. The following persons attended the Hearing: Ms CA Williams for the Applicants, Mr IG Thompson for Respondent 1 and Mr PJ Hoskins for Respondent 2, Mr Stephen Brown Property Manager for Respondent 1.

Applicants' Statement of Case

19. The Applicants stated that the issue was the reasonableness of the insurance premiums. In oral evidence at the Hearing the Applicant's Representative said that it had not been possible to obtain like for like quotations because Respondent 2 had not provided the policy documents and claims record in order that a quotation could be obtained that compared. In response to Respondent 2, stating that a list of claims had been provided, the Applicant's representative said that it had lacked detail.

20. The list of claims submitted was:

Date of Loss	Peril	Total	Status	Risk Address
2008	Fire	£9,700		Refer to previous insurers for details
17/01/2011	Burst Water Apparatus	0.00	Closed	
07/05/2013	Escape of Water	75.00	Closed	

21. The Applicants' Representative noted that a claim of £9,700 had been made. It was said that Mr Brown, Property Manager of Respondent 1's Agent had stated that the fire had occurred in a building that was not included on the schedule of properties insured under the policy arranged by Respondent 2's Brokers. Mr Brown stated that the fire had occurred in an electrical meter cupboard. The repair was abut £2,000 but the cost had risen to £9,000 because alternative accommodation had to be provided for the tenants affected as their property had no electricity. The building in which it occurred was covered by the policy arranged by Respondent 1's Managing Agents of Deacon but was not one of the buildings that had been acquired by Respondent 2.

22. The Applicant's Representative contended that Respondent 2 had not been transparent about the commission it had received from the insurance companies. In response to the Tribunal's question Respondent 2's Representative stated that the Landlord did not receive any commission on the insurance policy but could not assist the tribunal on the matter with regard to

the Managing Agents. The Applicant's Representative stated that commission may have been paid to Respondent 2's Managing Agents referring to Simarc and Leasehold Property Services. It was further contended that the insurance had not been arranged 'at arm's length' as a Director of Respondent 2 was also a Director of the Insurance Broker who procured the insurance and therefore there was a potential conflict of interest.

23. The Applicant's Representative stated that the insurance was obtained by Respondent 2 on the basis that 26 of the 33 units it had acquired were social housing. It was said that in fact only 5 of the 33 were rented through Orbit Housing and 4 were shared ownership although subject to assured shorthold tenancies. It was added that the Housing Association would have its own insurance for its properties.

24. It was said that the Applicants had consulted Mr C Hutt FCII, of Insurance Brokers RE Hutt of 21 Queens Road, Coventry CV1 3EG who had said that the claim of £9,700, which had not been in one of the properties acquired by Respondent 2, and the erroneous statement that 26 of the 33 properties that had been acquired were social housing would both have increased the premium.

25. The Applicant's Representative said that Respondent 2 had been given a refund on insurance of £5,032.21 to Respondent 1 but gave no reason for it. Whereas it was welcomed by the Applicants it was considered to be an admission that the premium had been too high previously.

26. The Applicant stated in written submissions that Respondent 2 had responsibility to produce:
    a) the claims record of the building
    b) the methods by which the landlord achieves a competitive premium of insurance
    c) full details of any commission or repayment or other benefit out of the insurance
    d) full details of the present insurance cover with a copy of the policy document and last schedule.

27 What were said to be comparable quotations prepared by RE Hutt & Company Ltd were submitted as follows:

Aegeas	£3,782.11 - Excess £250.00
NIG	£5,510.00 - Excess £1,000 subsidence; £250 other claims
AXA	£7,427.37 - Excess £1,000 subsidence; £250 other claims
Mitsui	£7,986.04 - Excess £1,000 subsidence; £250 other claims
Ecclesiastical	£7,704.81 - Excess £1,000 subsidence; £250 other claims
Zurich	£9,921.66 - Excess £1,000 subsidence; £250 other claims

Respondent 1's Case

28. Respondent 1 set out the insurance premiums for the years in issue in a table as follows:

Year	Premium	Amount Per Leaseholder
2009	£11,538.00	£287.34 (15 & 18 Wilks Walk) £293.68 (22, 24 – 26 Wilks Walk) £306.18 (90 – 100 Finney Drive)
2010	£16,119.00	£415.70
2011	£16,704.00	£435.83
2012	£13,540.00	£303.82
2013 (Budget)	£14,791.99	£358.85

29. The written representations of Respondent 1 stated that under paragraph 6 and 7 of the Seventh Schedule it was entitled to recover the insurance premium from the Leaseh9olders. Up until 31st May 2009, Respondent 1 insured all the blocks of flats on the estate. From 1st June 2009, insurance for 33 out of the 54 units was taken over the Respondent 2 pursuant to its acquisition of the freehold. In the following table the premiums for each of the years in issue is summarised spilt between the insurance policy retained by Respondent 1 and the policy held by Respondent 2.

Year & Policy	**Respondent 1's Policy**	**Respondent 2's Policy**	**Total**
2009			
Buildings	£1,330	£7,065	£8,395
Terrorism	£175		£175
Directors & Officers'	£544		£544
Emergency Assistance	£2,424		£2,424
Total	£4,473		£11,538
2010			
Buildings	£2,045	£12,439	£14,484
Terrorism	£120		£120
Directors & Officers'	£218		£218
Emergency Assistance	£1,297		£1,297
Total	£3,680		£16,119
2011			
Buildings	£2,752	£13,799	£16,551
Terrorism	£153		£153
Total	£2,905		£16,704
2012			
Buildings	£2,828	£9,915	£12,743
Terrorism	£160		£160
Public Liability	£637		£637
Total	£3,625		£13,540
2013 (Budget)			
Buildings	£3,365	£10,633	£13,998
Terrorism	£73	£92	£73
Public Liability	£629		£629
Total	£4,337		£14,792

30. The Respondent 1 stated that the Applicant's flats are insured under a policy held by Respondent 2. It was said that Respondent 1 has no control over this

policy and cannot assist the Applicants or the Tribunal in respect of its procurement, claims history or commission arrangements.

31. Respondent 1 stated in written representations dated 23rd October 2013 that Respondent 2's position is that it should not be a party to these proceedings because under paragraph 6 of Part 2 of the Seventh Schedule the obligation to insure the Property is with Respondent 1 subject to Respondent 2's right to nominate an insurer. However it was said that the reality is somewhat different.

32. Respondent 2 purchased the Property in or around June 2008. On 1st July 2008 Respondent 2's Managing Agent contacted Respondent 1's Managing Agent by e mail stating that: *We are currently trying to arrange the insurance* ... On 15th May 2009 a further e mail was sent Respondent 2's Managing Agent to Respondent 1's Managing Agent stating: *We are putting this development on cover from 1st June 2009...*

33. On 1st June 2009 Respondent 1 lapsed its cover for the Property and Respondent 2 took over the insurance arrangements though it's Managing Agent. Respondent 2 also employed Leasehold Property Management Limited as its Agent. Respondent 2 has in practice procured the insurance policies the premiums for which are in issue. Respondent 2 has taken over the insurance responsibilities from Respondent 1 in totality. This is further evidenced by the premium invoices which are addressed to Respondent 2 and issued by its Agent to Respondent 2, Leasehold Property Management Limited. The Leases state that: *In accordance with the Lease the insurance covering the above mentioned property has been affected by the Landlord...*

34. Respondent 1 submitted that as Respondent 2 has, in practice arranged the insurance it is for Respondent 2 to answer the Applicants' challenge regarding the premiums for the years 2009 to 2013. If the Tribunal is minded to make an adjustment Respondent 1 requested that any decision is made binding upon Respondent 2, so that Respondent 1 is not left to bear the brunt in isolation.

35. Respondent 2 referred to the written witness statement of Stephen Brown, the property manager for Respondent 2's Managing Agent. Mr Brown stated that until 31st May 2009 the whole estate was insured through Respondent 1's broker. This changed when Respondent 2 purchased the freehold of the Property. They purchased 33 of the 54 flats. On 1st July 2008 Kirsty Paice of Respondent 2's Managing Agent advised Mr Brown by email that they were trying to arrange insurance whereupon he advised them that the insurance was in place until 31st May 2009. Mr Brown received a further email from Kirsty Paice on 15th May 2009 advising that Respondent 2's Managing Agent was taking over the insurance (copies of all the emails were provided). Mr Brown assumed that because the Agent was acting for the Freeholder they had authority to do this and the policy arranged through Deacon was discontinued.

36. Mr Brown said that he was very surprised at the amount of the premium noting that: *It had increased dramatically when compared with the Deacon*

premiums. He said that throughout 2009 and 2010 he had questioned Respondent 2's Managing Agents Simarc and Leasehold Property Management Limited by email and telephone (Copies of emails dated 12th February 2010 and Simarc dated 8th February 2010 were provided). At this time he said he was receiving a large number of complaints from leaseholders in relation to the increases.

34. In 2012 he said that when he prepared the budget he split it into *two schedules: one for Simarc flats and one for the others*. He said, previously the insurance had been divided equally between the 54 flats but now given the large differential in premiums it did not appear equitable to him that *the non-Simarc flats would be over paying for their insurance.*

37. Mr Brown said that the only reason given by Simarc and Leasehold Property Management Ltd for the increased premiums was an increased risk associated with the social housing elements of the estate. He said he had managed *a number of estates which shared ownership, affordable homes and social landlord, and this had not affected the premiums to the extent that it has on this estate.*

38. He said that in 2012 Cox Braithwaite were appointed as brokers and following complaints to this company a refund of premium in the sum of £5,032.21 was paid.

Respondent 2

39. The Respondent 2 in written representations stated that it had no responsibility under the Leases for the Properties to carry out any management function or to collect or receive service charges. Attention was drawn to Clause 6 reproduced above which states that Respondent 2's only responsibility if to nominate an office of repute for insurance for Respondent 1 to utilise to comply with its insurance Covenant The insurance companies by Respondent 2 have been AXA for 2009/20, Aegeas (formerly Fortis for 2010/12 and Aviva for 2013/14. It was submitted that these were without doubt offices of repute.

40. At the Hearing Respondent 2's representative stated that he could not say whether the premiums were excessive or not excessive. Copies of extracts from a series of cases were provided namely *Bandar Property Holdings Limited v JS Darwen (Successors) Limited* [1968] 2 All ER 305; *Havenridge Limited v Boston Dyers Limited* [1994] 2 EGLR 73; *Berrycroft Management Company Limited and others v Sinclair Gardens Investment (Kensington) Limited* [1997] 1 EGLR 47 Solent House (Management) Limited v Freehold Managers (Nominees) Limited LON/00AH/LCI/2009/001 and O'Sullivan and others v Regisport Limited LVT/INS/027/003/00. Of these specific reference was made to *Havenridge*, and *Berrycroft* in which it was said that the court held there is only an obligation in these circumstances to nominate an office of repute and there is no obligation to 'shop around'. The landlord was only obliged to obtain market rates.

Payability

41. The Tribunal noted at the hearing on 25th November 2013 that Clause 6 of the Lease required Respondent 2 (the Landlord) to nominate an insurer and Respondent 1 (the Management Company) arrange that insurance with the nominated insurer. The policy should then be placed in the name of the Landlord and the Management Company. It appeared from the evidence put before the Tribunal that Respondent 2 had both nominated and arranged the insurance through its broker and put the policy in its own name alone. The result of this was that Respondent 2 was invoiced for the premium which was then passed on the Applicant by way of the service charge.

42. The issue before the Tribunal was the reasonableness and payability of the insurance premium. The arrangement of the insurance under the Lease was considered relevant by the Tribunal for the following reasons:

1. The Applicants had raised the point, amongst others, that they had not been able to obtain information regarding the policy in order to address questions as to its reasonableness. This seemed to be due to the policy being held by the Landlord and not the Management Company.

2. Respondent 2's initial submission was that it should not be a party to the proceedings because under the Lease it only nominated an insurer and it was for Respondent 1 to arrange that insurance, including a negotiation. However, this was not in the event correct.

3. Under the legislation the Tribunal must determine a reasonable premium. If it were to determine that the premium paid by the Applicants to be higher than what is reasonable this would by implication mean that a refund would be payable. It would seem that under the Lease this would be payable by Respondent 1 and any indemnity for that sum would be a matter between the two Respondents. Although enforcement is not a matter for the Tribunal its findings in the course of the determination might affect such enforcement.

43. The Tribunal gave the parties an opportunity to make written representations. Their responses were as follows:

44. The Applicants' Representative reaffirmed its case as stated above reiterating its submission that having assumed the responsibility for the arrangement of insurance outside the terms of the Lease there is a lack of transparency with regards to any commissions paid to the agents and connected persons or entities and as to how the premiums have been calculated. It was also contended that the arrangement of the insurance by the Landlord via their appointed insurance broker was not a transaction at arm's length due to an apparent conflict of interest as a Director of Freehold Portfolios (GR) Limited is also a director of the insurance brokers who procured the insurance.

45. Respondent1 stated that the Tribunal is only entitled to make a decision on the basis of the evidence presented and therefore as the Applicant has made

no submission on the question of payability the Tribunal is not entitled to make a decision on the point.

46. Notwithstanding this, it was added that the Applicant has had the benefit of the insurance cover, regardless of the names on the policy. The Tribunal should make a determination on the reasonableness of the premiums having regard to the evidence before it. If it were minded to make a decision that the Applicants had no liability to pay the premium at all whatever the reasonable premium is finally determined then the applicants will have received the benefit of the policy without paying for it. The Tribunal was referred to *Daejan v Benson* on the general principle that a balance is to be struck between protecting the tenants' statutory rights and ensuring that they (the tenants) do not obtain a windfall benefit without good reasons. Furthermore, it was said in *London Borough of Brent v Shulem B Association* [2011] EWHC 1663 a "non-technical" approach should be adopted and that the Applicants should pay for the service charges they have received.

47. Respondent 2 submitted that the Applicants have made no submissions on the issue. It was also contended that if the Applicants do not wish to raise the issue of payability the Tribunal has no jurisdiction to determine it referring to *Birmingham City Council v Keddie* [2012] UKHT 323 (LC) and *Crosspite Limited v Sachdev* [2012] UKHT 321 (LC).

48. Respondent 2 then reaffirmed that irrespective of whether a literal interpretation of office of repute was taken meaning and insurance company with a good reputation or an alternative interpretation of an office that undertakes the risk Respondent 2 has fulfilled its obligation under the Lease and referred the Tribunal to the companies which it had nominated.

Clarification of Evidence

49. In the course of its consideration of the evidence the Tribunal found that there appeared to be two sets of figures in relation to the insurance. Before coming to a final decision the Tribunal requested an explanation of these figures as follows:

a) By the Property Manager of Respondent 1's Managing Agent providing reconciliation between the amounts of the Insurance Invoices and the Service Charge Accounts because the insurance year did not correspond to the service charge year.
b) It was noted at the hearing that it was said the original Aegis invoice was for £15,172.69 which was reduced to £10,140.49 by the refund but it was not clear whether the total cost of £13,540 in the Service Charge Account for the year 2012 took into account the refund of £5,032.21
c) It was also not clear whether the Aegis refund related only to 2012/13.

50. Respondent 2 referred the inquiry to its nominated insurance broker Cox Braithwaite Insurance Brokers who stated that the refund of £5,032.20 only applied to the 2012 to 2013 period and therefore the insurance premium for that year was £10,140.49.

51. Respondent 1 provided reconciliation and confirmed the insurance invoices and service charge figures for the years in issue as set out in the table below.

Insurance Year 30 June – 1 July	**Insurance Invoices**	**Service Charge Year 1 Jan – 31 Dec**	**Policy**	**Service Charge Accounts**
2009/2010	Axa £11,978.13	2009	2009: Buildings Terrorism Directors & Officers' Emergency Assistance Total	 £8,395 £175 £544 £2,424 £11,538
2010/2011	Fortis £12,765.69	2010	2010: Buildings Terrorism Directors & Officers' Emergency Assistance Total	 £14,484 £120 £218 £1,297 £16,119
2011/2012	Aegis £14,573.91	2011	2011: Buildings Terrorism Total	 £16,551 £153 £16,704
2012/2013	Aegis £15,172.69 Reduced to £10,140.49 by refund	2012	2012: Buildings Terrorism Public Liability Total	 £12,743 £160 £637 £13,540
2013/2014	Aviva £9,801.29	2013	2013 (Budget): Buildings Terrorism Public Liability Total	 £13,998 £165 £629 £14,791

Section 20C Application

52. The Applicant made an application to limit the service charge arising from the landlord's costs of the proceedings under section 20C Landlord and Tenant Act 1985. It was stated that they had requested details previously. It was said that it was not until they had applied to the Tribunal that they had a satisfactory response to their demands except for the insurance.

53. Respondent 1 submitted that it would not be equitable in the circumstances to make an order under section 20C. The Respondent 1 stated firstly that it could recover the costs of the proceedings under paragraph 8 and 9 of the Sixth Schedule. Secondly that it was a Leaseholder owned Management Company with no funds of its own. Its sole function is the management of the estate and its responsibilities as defined within the leases. If an order were made it would be faced with the prospect of seeking funds to recover such costs from its

shareholders, which are the leaseholders. It was added that it had been put to considerable cost in preparing the substantial file of documents in answer to the Applicants case when in the event all matters were settled except the insurance.

Decision

54. The Tribunal considered all the evidence put before it. Clause 6 of the Lease required Respondent 2 (the Landlord) to nominate an insurer and Respondent 1 (the Management Company) arrange that insurance with the nominated insurer. The policy should then be placed in the joint names of the Landlord and the Management Company. The Tribunal found from the evidence that Respondent 2 had both nominated and arranged the insurance through its broker and put the policy in its own name alone. This was a clear breach of the terms of the Lease. The result of this was that Respondent 2 was invoiced for the premium which was then passed on the Applicant by way of the service charge.

55. The interpretation of the Lease is inherent in every application. For example a tribunal cannot determine that an amount is payable it if is *prima facie* not in accordance with the Lease. In the present case as the parties had not addressed the interpretation of a relevant provision of the Lease and its effect, if any, on a possible decision it was right that they should be given an opportunity to do so.

56. The Tribunal considered the representations and found that the parties did not consider that the nomination of the insurer and arranging of the insurance in contravention of the Lease was significant. The Tribunal found that it was for Respondent 1 to protect its rights and obligations under the Lease in this regard.

57. The Tribunal then considered the premiums paid by the Applicants taking into account the claims record, the quotations submitted by the Applicants and the decisions in the cases referred to by Respondent 2.

58. There is no evidence so suggest that the premiums for the years 2009 of £11,978.13 with Axa, 2010 of £12,765.69 with Fortis, 2012 of £10,140.49 with Aegis (taking account of the refund of £5,032.20) and 2013 of £9,801.29 with Aviva were not reasonable. It is agreed that the 2009 and 2010 premiums are on the high side but within what might be expected to be obtained on the open market. Indeed the premium of £9,801.29 is in line with a quotation of £9,921.66 from Zurich submitted by the Applicants as being comparable.

59. However the Tribunal found that in the absence of explanation the premium for 2011 of £14,573.91 with Aegis was significantly out of line with the premiums charged for years before and after. It is an increase of £1,808.22 on the 2010 premium and £4,433.42 on the 2012 premium taking into account the refund.

60. The Respondents have provided no cogent explanation for such an increase. The *Havenridge* and *Berrycroft* decisions have not removed the principle of reasonableness from the application of section 19. The premiums having been challenged, the onus is on the Respondents to satisfy the Tribunal that they were reasonably incurred. In the absence of an explanation for the refund on the 2012 premium or for the increased premium in 2011, the Tribunal is entitled to take a robust approach and it concludes that the premium for 2011 was not reasonably incurred. Doing the best it can with the evidence provided, it assesses that a reasonable premium would have been between the 2010 and 2012 figures and adopts the former, namely £12,675.69.

61. The Tribunal found there to be no reason for such an increase. The Tribunal noted that there had been a claim of a burst water apparatus in the year prior (30th June 2010 to 1st July 2011) but in the absence of more detailed evidence regarding the claim, it could not see how the claim would justify an increased premium of nearly £2,000. It finds the assertion of insurance not being arranged at arm's length and the assertion that the claims history was incorrect to be irrelevant because there is no evidence that the premiums for the other relevant years were increased because of these factors.

62. The Tribunal determines that the following insurance premiums to be reasonably incurred and payable:

30th June 2009 to 1st July 2010	£11,978.13
30th June 2010 to 1st July 2011	£12,765.69
30th June 2011 to 1st July 2012	£12,765.69
30th June 2012 to 1st July 2013	£10,140.49
30th June 2013 to 1st July 2014	£9,801.29

Section 20C Application

63. The Tribunal found it would be inequitable to make an order under section 20C of the Landlord and tenant Act 1985 due to the limited finding in favour of the Applicants, the withdrawal of all but one of the items originally in issue and the nature of the Management Company (Respondent 1).

Judge JR Morris 31st March 2014