FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2019/0215**
Property	**:**	**Flat 1, The Angell, 1 Larkhall Lane, Stockwell, London SW4 6RQ**
Applicant	**:**	**Roger T. Anstey**
Representative	**:**	**Self**
Respondent	**:**	**Wallace Estates Limited**
Representative	**:**	**Stevensons Solicitors**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Hargreaves** **Alison Flynn MA MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**5th August 2019**

DECISION

Decisions of the tribunal

(1) Wallace Estates Limited is substituted as Respondent in place of the managing agents Simarc Property Management Limited, which is not the correct respondent.

(2) The tribunal determines that the sums claimed in respect of insurance premiums, as referred to below, are reasonable and payable. The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(4) Since no charges or costs have been levied in respect of this claim on the papers before the tribunal, the tribunal makes no determination as to the reasonableness of any such forthcoming service charges or administration charges.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount payable in respect of insurance premiums chargeable in respect of The Angell, a converted and extended former pub in Stockwell, consisting of ten flats, five in each part. There is no evidence to contradict the Respondent's assertion that as a "converted mixed timber, concrete floored building with[in an] amber surface water area" the building "has an increased risk from standard".

2. Both parties elected to have this application determined on paper. It follows that we are limited to the Landlord's/Respondent's statement of case, the Applicant's reply, and the Respondent's further response, having heard no oral evidence.

3. The relevant legal provisions are set out in the Appendix to this decision. There is no hearing bundle and therefore references are to pages in the Applicant's and Respondent's evidence respectively, prefixed by A or R as appropriate.

4. The parties' pleadings were produced in response to detailed directions issued on 25th June. It is fair to observe that the Respondent's response to these directions is more comprehensive than the Applicant's, and we stress at the outset that the Applicant fails because he has failed to make out his case on unreasonableness on the balance of probabilities for the reasons we give below.

5. We have had some difficulty in determining the precise ambit of the s27A challenge although on any view it only concerns insurance premiums and charges. Starting with the Applicant's s27A application, the indication at panel 7 is that the challenge is to the charge for the year 2019/2020. That is emphasised by page 10 of the application which refers to the charge of £729.23 (the Applicant's share of the insurance premium of £5,692) for the year 2019/2020. That description is underlined and under the line is a list of charges from 2015/2016 onwards. In the list of issues to be determined by the tribunal the Applicant "seeks an order to change provider to a more reasonable provider" and for a "refund of the difference." This is not within the tribunal's jurisdiction and might go some way to explaining the Applicant's failure to provide sufficiently cogent evidence on the question of reasonableness within the meaning of s27A LTA 1985.[1] Notwithstanding that the directions proceed on the basis that the challenge is to the insurance premiums for the years 2015-2020.

6. The bundle produced by the Respondent (Landlord) therefore contains evidence of demands from 2015 (tabs 3-15) and summaries of cover for the years 2015-2020 (tabs 16-20), together with details of the commission payable for the years 2016-2019 (tab 25). It is also said to contain alternative quotes from AXA for 2017 and 2019 renewals (tabs 27 and 29) as well as Zurich for the renewals in 2017 and 2019 (tabs 28 and 30). The description by the Respondent of the effort involved in obtaining those quotes as "extensive" is exaggerated (see paragraph 13 of the Respondent's statement of case).

7. Another important document is a reinstatement cost assessment (Cardinus Risk Management Limited) dated 27th March 2018 (tab 31). As to that we make it clear at the outset that the Respondent/its brokers were obviously under an obligation to disclose that on any insurance renegotiation and the Applicant's suggestion to the contrary (because it triggered an increase in the premium quoted for 2018-2019) is misconceived. Disclosure is a fundamental obligation in arranging insurance.

8. In his statement of case at p4 (which is not pleaded in paragraphs and is more of a discursive letter responding to the Respondent's pleading) the Applicant stresses the limits of the application: "Further, we are not claiming retrospectively for costs, only requesting that going forward, reasonable rates are demanded from the leaseholders. We believe this to be a fair, just and reasonable request of the tribunal to enforce and the respondent to offer."

[1] See also the last paragraph of the Applicant's pleading which states that "we are reasonable in a request for the tribunal to, in their decision, demand that fairer premiums are charged in the future" which is not within the tribunal's jurisdiction either. Neither is this process an "arbitration" as suggested by the Applicant.

9. To complicate matters the only evidence produced by the Applicant in respect of alternative quotations is in the form of (i) an AXA quote dated 13th March 2018 (A p8) and (ii) an Aegeas quote valid for 60 days from 18th March 2019 (A p21). So the only alternative evidence as to reasonableness provided by the Applicant for the year 2019-2020 is the Aegeas quote. On this basis alone *if* the Applicant was challenging the reasonableness of any premiums before 2018, his application would fail due to lack of evidence of alternative quotations demonstrating the unreasonableness of the Respondent's charges.

10. For the sake of completeness however, we deal with both these alternative quotations, which are based on annual quotations for the relevant years (and to that extent are "like for like").

11. As to the AXA quotation (obtained in 2018) we accept the Respondent's supplemental statement in reply paragraph 17(a) which is that the quotation is not on a "like for like" basis because the Aviva policy "provides for alternative accommodation for up to 30% of the sum insured with no time limit [whereas] the AXA quotation provides 20% of the sum insured for a maximum of 24 months."

12. The AXA quotation obtained on behalf of the Applicant for 2018-2020 amounted to £3527. The Aviva premium accepted by the Respondent originally amounted to £6,374.04. This was reduced to £4635 (see the Applicant's statement of case) then subsequently increased as the result of the property re-evaluation to £5480. There was an increase in insurance premium tax in 2018 from 10% to 12%. The Respondent points out that in 2018 a rate reduction was negotiated (from the £6,374.04 to £4635) which would have been worth 36%, the effect of which was diminished by the declared value increase of 19% (see paragraph 14(g) of the Respondent's first statement of case). However, the final result for 2018 was a reduction from the £6052.64 charged for 2017-2018 (see R tab 18 p129).

13. The Respondent was directed by paragraph 8(k) of the directions to provide "alternative quotes for the individual block". See paragraph 10 of the Respondent's main statement of case. In response the Respondent has provided alternative quotes for AXA and Zurich for 2017 but none for 2018 (see below as to alternative quotes for 2019). This is not particularly helpful or relevant to our decision. For what it is worth the AXA quote at tab 27 R p282 is £6391.58 plus IPT as opposed to the Aviva premium of £6052.64. The Zurich reference at tab 28 p286 contains no useful evidence on the point for us without further explanation though we accept it might be meaningful to someone in the Respondent's office.

14. As to the Aegeas quotation obtained in March 2019, it appears that it was first disclosed by the Applicant as part of his statement of case. Dealing with that evidence in paragraph 17(b) the Respondent again

contends that it is not a "like for like" quotation for two reasons (and we have taken into account the fact that the date of 2009 is a clear typographical error and we read it as 2019). First, (tab 20 at R p134) under the Aviva policy obtained by the Respondent the building sum insured is £6.3m and the correct declared value of the property for 2019 is £4.2m, with common parts contents at £32,000 and alternative accommodation at £1.8m. The Aegeas quotation is provided on the basis of a building sum insured of £5m and a declared value of £4m, with £10,000 for common parts contents. Second, under the Aegeas quotation loss of rent is fixed up to 20% of the building sum insured for a maximum period of 36 months. We agree with the Respondent that the Applicant's evidence is not on a "like for like" basis.

15. Dealing with the second group of alternative quotes obtained by the Respondent for 2019, it states (paragraph 10) that it obtained alternative quotes from AXA and Zurich. The AXA alternative quote is dated 10th April 2019 (tab 29 p290) and is for £9503.99. The date of issue for the cover provided by Aviva (£5692.50 tab 20 p134) is 13th March 2019 and therefore we are not able to find that the comparable quotation was obtained prior to placing business for 2019-2020 with Aviva. However, it suggests that the Aviva quotation was considerably lower than AXA as quoted a month later. The Zurich quotation dated 27th March 2019 is at tab 30 R p295 and is for £6332.37 plus IPT. Again this suggests that the Aviva quotation is not unreasonable in the context of such market evidence provided.

16. On any view, the comparable evidence produced by the Applicant to support the claim that the insurance arrangements implemented by the Respondent are unreasonable, falls far short evidentially of what is required to challenge the Respondent's evidence. To be clear, the challenge to the 2019-2020 premium fails because the Applicant cannot show on the balance of probabilities that the amount is unreasonable. There is no evidence to support his claim that the premiums are "excessive and have routinely been higher than the market rate". The Applicant has complained that the insurance provided is a "premium product" but it is unclear to the tribunal as to how the Applicant seeks to make out that claim and on the basis of what evidence, and further, even if it is a "premium product", how that is proven to be unreasonable.

17. In general, though not perfectly, the Respondent has made a more competent response to the requirements set out in the tribunal's directions than the Applicant who has failed to provide evidence dealing directly with paragraphs 9 (b)(e)(f) and (g). Whilst that does not necessarily justify a decision against an Applicant, it does mean that the tribunal has limited evidence when making a decision.

18. As to some further points which have arisen, though they are peripheral to the main decision, we add the following. In general, we accept the

Respondent's assertion that terrorism cover is required for a property such as this and a decision to include it is entirely reasonable. Furthermore, the Applicant has failed to demonstrate that it is unnecessary or that omission of cover would lead to substantial reductions. Again, we reject the implication that the brokers should seek specific evidence or risk assessment in respect of terrorism cover, which is now widely regarded (in London in any event) as reasonable. It is also now accepted that the Respondent has not sought to negotiate zero excesses (which would inflate the premium) and that is contrary to the evidence. As to increasing the excess payable, the Applicant could have provided suitable alternative quotes which would be acceptable to the other leaseholders, but has failed to do so. As to commission payable, this has reduced from 40% (in respect of years for which there is no direct challenge by the Applicant) to 20% now (non terrorism, 5% for the terrorism premium) and the Applicant has produced no evidence that this is unreasonable.

19. Whilst relations with the managing agents over this issue have clearly become strained, we note that there are no other challenges to the service charges (so far as we are aware). For example, it is not necessary for brokers to provide evidence of alternative quotes, only to be able to show that the Respondent's methods and placing of business are reasonable when required. If pressure from the leaseholders has provided a better response, then that is all to the good, but does not prove of itself that insurance premiums have been unreasonable or are unreasonable.

20. We have carefully considered both parties' representations and conclude that all the Applicant's main points are answered by the Respondent, and form the material part of the core of this decision.

Application under s.20C

21. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it would not be just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The application was arguably based on a misapprehension about the scope and extent of the role of the tribunal and the onus on the Applicant to make out a case in terms of acquiring and producing sufficiently cogent evidence on the question of reasonableness.

Judge Hargreaves
Alison Flynn MA MRICS
5th August 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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, improvements 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 for 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 or later period.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).