



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference:	CHI/43UH/LSC/2020/0116
Property:	5 Oakhall Drive, Sunbury on Thames, Middlesex TW16 7LD
Applicant:	Michael Cardus
Respondent:	Grandglobe Ventures Ltd
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 (The 1985 Act) and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (The 2002 Act) Lessees application for the determination of reasonableness of insurance premiums.
Tribunal Members:	Mr R T Brown FRICS (Chairman)
Date and venue of Hearing:	02 March 2021 on papers submitted
Date of Decision:	08 March 2021

DECISION

Decision

Summary of Decision

1. The Tribunal determines that the insurance premiums as set out below for the years in dispute are not unreasonable:

2019/2019: £351.98 (for the Block of Four Maisonettes)
2019/2020: £495.32 (for the Block of Four Maisonettes)
and to be incurred (Budget) for
2020/2021: £620.00 (for the Block of Four Maisonettes)
2. The Tribunal allows the Applicant's application (and it applies to all four Lessees of the Block) under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its costs in relation to the application by way of service charge or administration charge.

The Application and Issues in Dispute

3. The application is dated the 8th November 2020.
4. The Applicant is the Lessee of the property and seeks determination in respect of insurance premiums paid for the years:

2018/2019 £229.05 per maisonette (£916.20 for the whole Block)
2019/2020 £296.88 per maisonette (1187.52 for the whole Block)
and to be paid for the year 2020/2021 £317.03 per maisonette (£1268.12 for the whole Block)
5. The Applicant further seeks a determination as to the right of the Respondent to include cover in respect of terrorism and the level excess in relation to flood risk.
6. The Applicant further seeks an order under Section 20C of the 1985 Act and Paragraph 5A of Schedule 11 of the 2002 Act. This part of the Application is made on behalf of himself and the other residents of the Block:

No 3: Elia Seoanez
No 7: Unnamed
No 9: Unnamed
7. The Applicant does not dispute his liability to pay his share of the premium by way of service charge under the terms of his Lease.

Inspection and Description of Property

8. For the reasons explained in the Directions the Tribunal did not inspect the property, but viewed it on Street View. The property comprises a block of four purpose built maisonettes constructed in the 1990s.

Directions and Documents before the Tribunal

9. Directions were issued on 8th December 2021.
10. A copy of the Lease dated 7th March 2000.
11. A Bundle prepared by the Applicant and comprising 44 pages.
12. This determination is made relying on the evidence and submissions made in the Bundle.
13. The Tribunal noted that despite being sent a copy of the Directions and the Application the Respondent has not in any way engaged in the proceedings.
14. The Tribunal in considering this case has had regard to its overriding objective:
The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 3

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must:

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

The Law

15. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 (the 1985 Act) as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002. (See Appendix).
16. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 of the 1985 Act). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is

reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

17. Under Section 20C of the 1985 Act and Schedule 11 Paragraph 5A of the 2002 Act, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administrative charge payable by the tenant specified in the application.
18. The Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
19. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*
20. *“Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.*

Ownership and Management

21. The Applicant owns a leasehold interest in the property. The Respondent is the owner of the Freehold. The property is managed by Sandrove Brahms.

The Lease

22. The Applicant holds Flat 4 Oakhall Drive under a Lease dated 7th March 2000 for a term of 150 years from the 23rd February 1996 at a ground rent of £50.00 per annum.
23. At Paragraph 4(4) of the Lease the Lessee undertakes to pay the Interim Charge and the Service Charge (which includes a sum in respect of insurance).
24. At paragraph 5(C) the Landlord undertakes to insure the buildings '*...against such risks as are usually covered by a Flat Owners policy...*'

The Applicant

25. The Applicant says that all correspondence has been via the agent at no time has direct contact been made with the Landlord.

2018/2019 Insurance year

26. The Premium for 2018/2019 was £337.22 per maisonette (£1,187.52 for the Block of Four maisonettes).
27. The Applicant was informed in 2018 by the Agent that insurance was arranged through a broker named Star.
28. The Applicant requested full details of the insurance and was provided with a copy of the invoice and a copy of the policy wording. Requests for a copy of the Schedule to the insurance were requested but never provided.
29. The Applicant obtained his own quotes which ranged from £249.42 to 314.35 for insuring the Block of Four maisonettes.
30. In correspondence the Respondent highlighted some differences in the cover but gave no explanation as to why the premium was still 4 times that of the comparison quotes.

2019/2020 Insurance Year

31. In respect of 2019/2020 the premium requested was £347.52 per maisonette. The Applicant obtained a quote for comparison in the sum of £455.81 for the Block of Four).
32. On this occasion the Respondent reduced the premium to £296.88 per maisonette. No explanation as to why the premium was double the comparison was given.

2020/2021 Insurance premium to be incurred

33. In respect of the premium for 2020/2021 the amount budgeted was £317.03 per maisonette. The excess in respect of escape of water has risen to £2,500.00 (500% increase) making escape of water practically uninsured.

The Respondent

34. The Respondent took no part in the proceedings.
35. Extracting such information as it could from the bundle of correspondence provided by the Applicant, the Respondent advised the Applicant as follows:
36. On 7th November 2018 Respondent explains that 2 brokers have been involved Reich and Star. Further the main reason for the premium increase in relates to the addition of terrorism cover (an additional £9.40 per flat) and an increase in the rebuild cost from £400,000.00 to £500,000.00.
37. In 2020/2021 the cover is increased to £669500.00 and the escape of water excess is increased to £2,500.00

The Tribunal's consideration

38. The Applicant's case is, quite reasonably, based on an attempt to compare the Landlord's premiums with the market. Unfortunately, this analysis is limited by the fact the Landlord has not provided sufficient detail to make an effective comparison.
39. The evidence from the correspondence is however that when challenged as to the level of premium the Respondent has reconsidered or renegotiated a new lower figure. There is no explanation provided as to what cover is provided for any reduced premium
40. The Tribunal found the Respondent's failure to engage with the proceedings to be highly unsatisfactory and certainly in contravention of its obligations under the Code Part 4.1 *'You should manage the property in an open and transparent basis'*.
41. Whilst the Tribunal acknowledges that an Agent can only act on the Landlord's instructions, it should ask itself whether or not it is appropriate to take on management of property where it is unable to comply with the Law or the Code.
42. The Respondent has failed to satisfactorily answer the Applicants requests for information relating to the insurance of the building Section 30A of the 1985 Act), in particular:
 - a) to obtain a summary of cover
 - b) to inspect the policy
 - c) to notify insurers of a potential claim
 - d) to challenge the lessor's choice of insurer.
43. In reaching its current Determination, the Tribunal considers the extent to which the Landlord (Respondent) has complied with the law and the Code.
44. A Landlord has a wide discretion when deciding the level and extent of cover offered to its lessees. However, it must be able to demonstrate that its actions are reasonable and that the resulting premium is reasonable in amount and the level of cover appropriate.
45. The principles for determining the reasonableness of insurance premiums are set out in a series of determinations:

Berrycroft Management Co Ltd and Other v Sinclair Gardens Investments (Kensington) Ltd [1997] 22EG 141: Insurance has been arranged in the normal course of business with an insurance company of repute;

Forcelux v Sweetman [2001] EGLR: Insurance has been reasonably incurred in accordance with terms of lease – the market has been regularly tested – and the costs themselves are not excessive;

Havenbridge Ltd v Boston Dyers Ltd [1994] 49 EG11: The premium charged does not have to be the cheapest available.

46. Applying those principles, the Tribunal finds that it is not unreasonable for a Landlord (indeed it is common practice) for a Landlord to insure against acts of terrorism.
47. It is, however, in this Tribunal's experience uncommon to see the level of excess in respect of escape of water to be as high as £2,500.00. There is nothing in papers submitted to assist the Tribunal on this point (or the amount by which the premium should be reduced to reflect an adjustment to a more common level) and it may be that there has been a high level of claims.
48. In conclusion, the Tribunal finds that the Applicant has raised a 'prima facie' case that the premiums charged by the Respondent are excessive and has supported this with alternative quotes for the years 2018/2019 and 2019/2020. These quotes are, however, exclusive of terrorism cover.
49. The Respondent has comprehensively failed to justify the premiums charged (and to be charged for 2020/2021) and appears when challenged to simply make a reduction without either trying to justify the original premium or explain the reduction, in the hope, presumably, that the Applicant will be appeased and not pursue the matter further.
50. The Tribunal makes a judgement based on the limited evidence before it and concludes:
 - a) The premiums charged and to be charged for the years in dispute by the Respondent are excessive and unreasonable.
 - b) The quotes provided by the Applicant are helpful but not conclusive evidence of the correct premiums to be charged, partly because they exclude cover for terrorism (which the Respondent is entitled to include should he so chose).
51. The Tribunal attempted to analyse the information provided by the Applicant (including such information provided by the Respondent contained therein) but was severely hampered by the Respondents failure to provide relevant detail and lack of clarity as to which year the quotes provided by the Applicant covered.
52. That limited analysis enabled the Tribunal to determine on the 'balance of probabilities' that the cover provided by the Respondent was broadly similar to the cover proposed in the Applicant's quotes.
53. After carefully weighing the information provided the Tribunal concluded that for 2019/2019 and 2019/2020 the quotes provided by the Applicant are a reasonable and realistic starting point. To these quotes must be added the terrorism cover required by the Landlord.
54. The Tribunal determines as follows:

For the year 2018/2019: £314.35 plus terrorism £37.63 = £351.98 for the Block of Four Maisonettes (i.e. £88.00 per maisonette (rounded)).

For the year 2019/2020: £455.81 plus terrorism £39.51 = 495.32 for the Block of Four Maisonettes (i.e. £123.83 per maisonette).

For the year 2020/2021 the Budget (i.e. the amount the Respondent can charge by way of Interim Service Charge) is estimated to be no more than an increase of 25.00% on the 2019/2020 figure i.e. £495.32 plus 25.00% = 619.15 say £620.00 for the Block of Four maisonettes (i.e. £155.00 per maisonette).

55. In the event that the actual figure for the year 2020/2021 is substantially above this estimate, the Leaseholders (together or separately) are at liberty to apply to the Tribunal for a determination of the actual amount.

Section 20c and Paragraph 5A Application

56. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.
57. Other than ticking the boxes on the application form, the Applicant has made no submissions on this part of the application. Nor has the Respondent sought to defend the Application.
58. It might be argued in such circumstances that such application should be rejected for such reason. However, the application must be considered by the Tribunal, not least because there three other interested parties who may be affected by the decision.
59. Under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances to make its determination. It follows a similar course when considering administration charges. "Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise." (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000)).
60. "An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances." "The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order...; "The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else". (**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). "In any application under section 20C it seems to me to be essential to consider what will be the

practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.” (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

61. The Tribunal finds as a matter of fact that the Respondent has taken no part in these proceeding and it follows has incurred no costs.
62. Not only has the Respondent failed to respond to the Directions of the Tribunal but additionally, it failed to provide the Applicant with information relating to the insurance to which the Applicant is entitled under Sect 30A of the 1985 Act and the Code.
63. Had the Respondent behaved in the manner and to the standard required by the both the 1985 Act and the Code it is highly likely that these proceedings would have been unnecessary.
64. Taking this into account the Tribunal allows the application under Section 20C of the 1985 Act and orders that any costs incurred in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.
65. This Order applies to the lessees of all four properties in the Block.

Paragraph 5A

66. For the same reasons the Tribunal allows the Applicant’s application under Section 20C above, the Tribunal allows his application under Paragraph 5A, so that the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicant in this or any other year.
67. As in respect of the 20C Order this determination applies to the lessees of all four properties in the Block.

Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annexe (The relevant statutes)

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

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, 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 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.

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.
- (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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal,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.
- (3) The ... 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 5A Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

“The relevant court or tribunal”

The First-tier Tribunal