



**FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00AK/LSC/2019/0254**

**Property** : **22 Oakwood Court, London N14 4JY**

**Applicant** : **Mr D Georgiades**

**Representative** :

**Respondent** : **Brickfield Properties Ltd**

**Representative** : **GSC Solicitors LLP**

**Type of application** : **For the determination of the  
reasonableness of and the liability to  
pay a service charge**

**Tribunal members** : **Judge S Brilliant**  
**Mr D Jagger MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **01 October 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that no sum is payable by the Applicant in respect of insurance charges for the service charge years 01 August 2018 - 31 July 2019, and 1 August 2019 – 31 July 2020.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal also makes an order that no administration charges are payable by the Applicant arising from his non-payment of the insurance charges demanded of him.
- (4) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 01 August 2018 - 31 July 2019.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. This matter was decided on paper with written representations from both parties.
4. We were informed that the immediate landlord of the Applicant is now Brickfield Properties Ltd and we substitute that company as Respondent in place of Daejan Properties Ltd.
5. The tribunal had the following evidence/representations before it:
  - (1) Application notice received on 5 July 2019.
  - (2) The Respondent's statement of case dated 23 August 2019.
  - (3) The Applicant's statement of case dated 10 September 2019.
  - (4) The Respondent's Reply dated 25 September 2019.
  - (5) The Applicant's reply dated 26 September 2019.

## The background

6. 22 Oakwood Close, London N14 4JY, the property which is the subject of this application, is an upstairs maisonette in a block of four purpose built maisonettes. The Respondent also owns other blocks in the close.

7. Photographs of the building were provided by the Applicant. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Applicant holds a long lease of the property dated 8 November 2001.

9. By clause 3(2) the Applicant covenanted to pay the Respondent:

*on demand a sum equal to all such sums as the Lessor may from time to time pay for insuring and keeping insured the demised premises against loss or damage by fire storm and tempest and such other risks as may be insured by the Lessor in the full rebuilding costs (or otherwise as provided in Clause 5(ii))... .*

10. By Clause 5(ii) the Respondent covenanted:

*At all times throughout the term hereby granted to keep the demised premises and the Lessor's fixtures and fittings therein insured against loss or damage by fire storm and tempest and such other risks covered under a comprehensive Insurance policy **in the joint names of the Lessor and the Lessee** (emphasis supplied) in such sum as shall from time to time to be considered to be the full rebuilding cost ...*

## The issues

11. The Applicant's complaint is that for a number of years (and he refers in particular on pages 10 – 12 of the application form to the years 2008 – 2018) he has been overcharged for insurance. He draws attention to the fact that his neighbour immediately below him at flat 21 has a lease which permits her to self-insure. She has obtained insurance at half the cost that the Applicant is paying.

12. However, the only year in respect of which the Applicant seeks a determination in section 7 of the application form is the year 2018/2019. But when directions were given on 15 July 2019, it was recorded that the Applicant also challenged the estimated costs of insurance in the year 2019/2020. Accordingly, we are only concerned in this decision with the years 2018/2019 and 2019/2020.

13. The following issues are for determination:

- (i) Whether there is any contractual liability on the Applicant to pay the Respondent for the cost of insurance.
- (ii) Whether it is reasonable for the Respondent to insure against the risk of terrorism.
- (iii) Whether it is reasonable for the cost of insurance to include a brokerage fee to a company associated with the Respondent.
- (iv) Whether the cost of insurance arranged by the Respondent is reasonable or not.

**Whether there is any contractual liability on the Applicant to pay the Respondent for the cost of insurance**

14. Clause 5(ii) of the lease requires the insurance policy to be in the joint names of the Applicant and the Respondent. It is not in joint names. The interest of the Applicant is noted on the policy, but that is not the same thing.

15. In Green v 180 Archway Road Management Co Ltd [2012] UKUT 245 (LC), the lessee covenanted in clause 2(vii) of the lease to pay for the cost of insuring the building “in accordance with” clause 4(ii).

16. Clause 4(ii) of the lease required the policy of insurance to be in joint names. The Upper Tribunal held that because the landlord had failed to insure “in accordance with” its obligation (in joint names), the cost was not recoverable.

17. It is true that in these proceedings clause 3(2) of the lease does not in terms provide that the Applicant is to pay the cost of insuring the maisonette “in accordance with” clause 5(ii) of the lease. To that extent the instant case differs from Green.

18. However, it would be strange if the liability to pay for insurance did not dovetail with the obligation to insure. Moreover, the insured loss in clause 3(2) is identical for all purposes to the insured loss in clause 5(ii).

19. In our judgment, it is to be implied in clause 3(2) that the obligation on the Applicant to pay for insurance is for that insurance which the Respondent is required to effect under clause 5(ii). Otherwise, the Respondent would be able to breach clause 5(ii) yet recover its costs. There would be no incentive to comply with the joint names obligation, which obligation would become otiose. Accordingly, we hold that the Applicant was under no obligation to pay the insurance costs for 2018.

20. If we are wrong on this, we now consider the other issues.

## **Terrorism**

21. There is no merit in this point. From our own knowledge and experience, it is routine for landlords in any part of London to expect to include a premium for damage by terrorism in a buildings policy. It matters not that the property is situated in Oakwood rather than Westminster.

## **Brokerage fee**

22. The insurance is arranged by Kidlington Properties Ltd, the insurance intermediary for the Freshwater Group of companies.

23. The commission payable is 20% on the gross buildings premium and 5% on terrorism insurance. This is the only source of remuneration for the brokers in respect of insuring the buildings in Oakwood Close. This covers the duties of placing the insurances, negotiating with insurers, dealing with third party and leaseholder queries and the like. Kidlington also provides a full claims handling service with the benefit of technical advice for the lessees on the block policy.

24. Tanfield Service Charges and Management 4th edition 6-06 states:

*One argument for treating a commission differently from any discount is that, in the market place, brokers will ordinarily charge a commission and, if the landlord is fulfilling that role, there is no obvious reason why it should be deprived of commission, which is part of the cost of obtaining insurance cover. As stated, it may be a question not only of what the lease provides, but also how such commission payments are structured as between the insurer and the landlord.*

25. There is no suggestion that the commission charged is not in fact being passed on to Kidlington. In our judgment, it is reasonable for the Respondent to charge this commission and it is charged at a reasonable rate.

## **Reasonable cost of insurance**

26. So far as far as whether the cheapest policy available has to be selected, Tanfield Service Charges and Management 4th edition 14-11 states:

*In Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd [2016] UKUT 317 (LC), the landlord used its own insurance agency which charged a 12% handling fee to deal with claims management and a broker to obtain the premium. The Upper Tribunal dismissed an appeal against the tribunal's finding that the landlord was not obliged to "shop around" for insurance. It stated the position as follows:*

*"So long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred. There is nothing to*

*suggest that the insurance was arranged otherwise than in the normal course of business, and the appellant did not seek to adduce evidence to support such a contention. The appellant's complaint is that it might be possible to obtain a cheaper rate, but it is not for the landlord to establish (as has been expressly found in Berrycroft) that the insurance premium was the cheapest that could be found in order for the costs to have been reasonably incurred. The words 'properly testing the market' used by Mr Francis in Forcelux in 2001 does not in any way detract from the decisions of the Court of Appeal in Berrycroft and Havenridge that the landlord must prove either that the rate is representative of the market rate, or that the contract was negotiated at arm's length and in the market-place."*

*Although it is arguable this approach sits uneasily with the later decision in Waler v Hounslow LBC, it is submitted it represents a succinct summary of the law in relation to the reasonableness of insurance costs under Landlord and Tenant Act 1985s.19(1).*

27. So far as block policies are concerned, Tanfield Service Charges and Management 4th edition 6-12 states:

*Where a landlord such as a local authority has a large portfolio of properties, it is common for to insure numerous separate properties under a "block" or "portfolio" insurance policy. As already explained above, the lessee is ordinarily entitled to any "bulk" discount given to the landlord for placing a large amount of cover with one insurer. However, the apportionment of the premium between blocks can cause significant difficulties, since (a) the requirements for insurance in the leases and (b) the risks, may well differ between blocks. Arguments frequently arise that the apportionment of a block or portfolio policy premium does not reflect either or both these considerations.*

*In COS Services Ltd v Nicholson [2017] UKUT 0382 (LC), the landlord insured its portfolio under a block policy but was unable to explain how many properties were covered under that policy or how the insurance had been negotiated. However, it provided evidence that the policy covered all the eventualities required by the lease of flats in the relevant premises. The lessees challenged the relevant cost of insurance for their building by relying on an insurance broker who obtained quotes from other insurers for insuring the block alone. The alternative quotes were at a quarter of the premium charged by the landlord's insurer, again covering those risks. HH Judge Bridge concluded that it was open to a landlord with a portfolio to negotiate a block policy, but that for the purposes of Landlord and Tenant Act 1985 s.19(1), it was "necessary" for the landlord to satisfy the tribunal or court that this "has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant advantages" to the tenants.*

28. So far as whether insurance costs have been reasonably incurred,

Tanfield Service Charges and Management 4th edition 6-13 states:

*The relevant costs of insuring residential properties are very frequently challenged under Landlord and Tenant Act 1985 s.19 and this topic is discussed elsewhere in some detail. However, COS Services Ltd v Nicholson also gave specific guidance about the approach to an assessment of whether the relevant cost of insurance has been reasonably incurred for the purposes of s.19(1):*

*(1) the court or tribunal should consider the terms of the lease and the potential liabilities that are to be insured against;*

*(2) it should require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market;*

*(3) the tenants may be able to provide evidence of alternative quotations for insurance cover, provided those quotations compare “like with like”, in the sense that “the risks being covered [by the alternative quotations] properly reflect the risks being undertaken pursuant to the covenants contained in the lease”. In other words, the “like for like” comparison is between any alternative quotations and the lease, and not between the alternative quotations and the actual policy taken out by the landlord.*

*HH Judge Bridge held that the element of the block policy premium apportioned by the landlord to the property was not reasonably incurred under Landlord and Tenant Act 1985 s.19(1). The judge applied Waler v Hounslow LBC 2017 UKUT 0832 (LC), and found the relevant cost of insurance for the block was excessive, in the sense that “considerably lower premiums for similar protection could be obtained elsewhere”.*

29. As we have said, the Applicant wishes to insure for himself at what he considers to be a much lower premium than he is currently paying.

30. The insurance premium is for the period 1 August to 31 July in each service charge year.

31. The amount payable for insurance in the year 1 August 2018 to 31 July 2019 is £536.47. This is made up of £465.58 for building insurance and an extra £70.89 for terrorism insurance. We have already dealt with the terrorist cover, so what is left is the premium of £465.58

32. The Applicant’s flat was insured in the year commencing 2018 through a large RSA block policy including several properties outside the Oakwood Close estate. The policyholder is the Freshwater Group of Companies. The Applicant says that forces him to pay a grossly inflated amount bearing no relation to the value of the property or his claims history. He is prevented from searching the market. The Applicant does not make criticisms of any apportionment between

different blocks.

33. The Applicant relies on four quotations which he says are on a like for like basis. He has informed the insurers of previous settlement claims between 1990 and 1993.

34. The quotations (including tax but not including terrorist cover) are as follows [A/54]:

Home Protect	£220
Aviva	£201
Admiral	£178
Intelligent Insurance	£155

35. The Respondent says that it is reasonable to insure on a block basis. The brokers do attempt to shop around. In 2015 other insurers were approached. These insurers declined, citing the previous claims history, except for Aviva which required a satisfactory subsidence history of Oakwood Close.

36. In 2019, the only other insurer prepared to insure the block was NIG. So for the year 1 August 2019 - 31 July 2020 the Respondent has changed insurers under the block policy to NIG. The premium for the current year, including terrorism cover and tax is £498.25. This is a reduction of £38.22.

37. The Respondent deals in some detail with the four quotations given to the Applicant set out in paragraph 34 above. The Respondent says that the Applicant does not appear to have mentioned that there is a possible further subsidence claim at another maisonette in the close. It points out that no policy wording is attached to any of the quotations.

38. The Respondent is entitled to insure through a block policy, provided he shows that it is not at substantially higher premium. We do not consider the comparable figures put forward by the Applicant are true comparables as it is far from clear whether the full settlement history has been factored into the alternative quotes. Moreover, when the Respondent's brokers did go into the market to obtain a new insurer in 2019 they but only achieved a small saving.

39. In conclusion, we are not persuaded that the cost of buildings insurance for the year 01 August 2018 - 31 July 2019 was excessive. In the same way, we consider that the lower cost of building insurance for the year 01 August 2019 - 31 July 2020 is not excessive.



## **Application under s.20C and refund of fees**

39. In the application form the Applicant applied for an order under section 20C of the 1985 Act and paragraph 5A of schedule 11 to the 2002 Act. Having taken into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. It is also determined that the Respondent may not recover any administration charges related to collecting the insurance payments. Finally, we determine that the Respondent should refund the Applicant the fee of £100.

**Name:** Simon Brilliant

**Date:** 01 October 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).