12819

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UF/LSC/2018/0023**
Property	:	**34 Robinson Way, Wootton, Northampton NN4 6FHJ**
Applicant	:	**Mr Jeremy Peachey FRICS**
Respondent	:	**Long Term Reversions (Dulwich) Limited**
Managing Agent	:	**Pier Management Limited**
Date of Application	:	**29th March 2018**
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** **Miss M Krisko BSc (Est Man) BA FRICS** **Mr N Miller BA**
Date of Hearing	:	**9th July 2018**
Date of Decision	:	**16th August 2018**

DECISION

CORRECTION CERTIFICATE

The Tribunal exercises its powers under Rule 50 to correct the clerical mistake, accidental slip or omission in its Decision dated 16th August 2018.

I hereby certify that due to a clerical mistake, accidental slip or omission in the Tribunal's Decision dated 16th August 2019 as follows:

The address of the Property in the heading should read NN4 6FJ **not** NN4 6FH

The figures in paragraph 1 of the Decision should correspond to those in paragraph 104 accordingly the insurance premiums determined to be payable:
for 16th July 2016 to 12th July 2017 should read £3,744.57 **not** £4,364.66
for 12th July 2017 to 23rd March 2018 (255 days) should read £2,838.56 **not** £3,744.57
for 25th March 2018 to 24th March 2019 should read £4,364.66 **not** £2,838.56.

In paragraph 15 "2 bedroom flat" should read "studio flat"

In the Decision and Reasons below the incorrect figures and words are struck through and the correct figures and words are shown in bold.

Judge JR Morris
5th September 2018

Decision

1. The Tribunal determines that the following insurance premiums to be payable:
16th July 2016 to 12th July 2017 2012 of ~~£4,364.66~~ **£3,744.57**
12th July 2017 to 23rd March 2018 (255 days) of ~~£3,744.57~~ **£2,838.56**
25th March 2018 to 24th March 2019 of ~~£2,838.56~~. **£4,364.66**

2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

Reasons

Application

3. An Application was made on 29th March 2018 for a determination as to the reasonableness and payability of the service charge pursuant to section 27A Landlord and Tenant Act 1985. The item in issue was the insurance premiums incurred for the years:
16th July 2016 to 12th July 2017 2012 of £11,150.40
12th July 2017 to 23rd March 2018 (255 days) of £8,453.10
25th March 2018 to 24th March 2019 of £12,998.40

4. Mr Peachey had applied for the past six years to be included in the Application but it was explained at the hearing that since Mr Peachey had only held the Lease on the Property since the 24th June 2016 only the period from the 16th July 2016 could be considered.

5. In addition, an annual Administration Charge of £19.99 had been made to which the Applicant had objected. The Respondent stated that it was agreed that this would not be charged and therefore was no longer in issue.

6. Directions were issued on 6th April 2018. In accordance with Directions the bundles were provided for the Hearing on 27th June 2018.

7. Mr Peachey had been under the impression that he was able to include in his Application all the tenants of 22-40 (even) Robinson Way, Northampton NN14 6FJ, 7–25 (odd) Brooks Close Northampton NN14 6FH, 24–42 (even) Brooks Close, Northampton NN14 6FH which are the three Blocks of ten flats (the Blocks) which are the subject of the insurance policy to which he was objecting. However, he had not obtained any of the tenants' written agreement. It was explained at the hearing that a schedule of tenants' names and signatures needed to be annexed to the Application with a statement confirming that they wished to be joined.

8. He also sought to challenge the apportionment of the insurance premium. The Maintenance Charge is apportioned equally under the Lease. There is no specified apportionment of the insurance premium but that has in the past always been apportioned equally. Mr Peachey submitted that it should be

apportioned according to the size of the flat. It was explained at the hearing that as such an alteration to one apportionment would affect all the tenants they would all have to be joined. As this was not the case the Tribunal was not able to decide this issue.

9. The Application under section 20C of the Landlord and Tenant act 1985 could be made on behalf of the tenants without their signed confirmation in writing.

The Law

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

11. 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*

12. 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.*

13. 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 Property

14. The Tribunal inspected the building in which the Property is situated in the presence of Mr Jeremy Peachey, the Applicant, Mr David Bland from the Respondent's Legal Department and Mr Matthew McDermott, Counsel for the Respondent.

15. The Property is a ~~two bedroom~~ **studio** flat situated in one of three identical blocks of flats (the Blocks) which are all insured under the same policy. The Blocks were said to be identical so the Tribunal only inspected the Block in which the Property is situated.

16. Mr Peachey, in his written representations, had described the Blocks as being of 10 flats comprising 3 studio flats, 3 one bed flats and 4 two bed flats. He said the Blocks are of modern construction on three floors with cavity brick walls pitched concrete tile roofs and concrete floors. There are communal halls and stairways, communal parking and with a mixture of hard landscaping and shrubs. There are no lifts and utilities are mains electricity, water and drainage but no gas. The Tribunal and Respondent accepted this description based on what was viewed at the inspection.

17. In addition, the Tribunal noted the Blocks were rendered to the ground floor and some flats had balconies. There are PVCu rainwater goods and PVCu double glazed windows and doors. Each Block has a bin store. Overall the Blocks were in generally good condition and the grounds were well maintained. The Blocks are situated in a cul de sac in a modern residential area on the outskirts of Northampton.

The Lease

18. A copy Lease was provided which it was agreed is common to the all the flats. The Lease is for a term of 150 years from 1st January 2006 at a ground rent of £50.00 per annum adjusted in accordance with clause 8 of the Lease. The Lease is between David Wilson Homes Limited (the original landlord) (1), Neil Trevor Francis Halsey and Felicity Teresa Halsey (the original Tenants) (2) and Fields End Management Company Limited (the Management Company)

(3). The Lease was assigned to Mr Peachey on 24th June 2016. The reversion was assigned to Ground Rents (Regisport) Ltd which subsequently became the Respondent, Long Term Reversions (Dulwich) Limited which is part of the Regis Group (Holdings) Ltd.

19. The Managing Agent is Residential Management Group Limited who administer the Maintenance Charge which is apportioned equally under the Lease. The Buildings Insurance is administered by the Landlord under paragraph 7 of the Eighth Schedule of the Lease as follows:

7.1 To insure and keep insured the Block and other structures at all times against the Insured Risks [defined in clause 1 of the Lease] in full reinstatement value PROVIDED ALWAYS

7.2 The provision is subject as mentioned in Paragraph 3 of the Sixth Schedule

7.3 The Landlord shall determine a reputable company or office with which the insurance is to be placed and the sum insured

7.4 The insurance amount shall include the provision for the cost of demolition and clearance of buildings reinstatement and architects and surveyors and statutory fees

7.5 Whenever requested by the tenant (at the Tenants expenseo to produce a copy summary or extract of the insurance policy and copies of the receipts for current premiums

7.6 The insurance cover shall extend to the Tenants for the time being of the Demised Premises and their mortgagees (if any)

7.7 Layout of the insurance monies in the repair rebuilding or re-instatement of the Buildings subject to the Landlord as all times being able to obtain all necessary licences consents and permissions form all relevant authorities in that respect.

20. Insured risks defined in clause 1.12 are: *fire lightning aircraft explosion terrorism riot civil commotion earthquake malicious damage storm flood escape of water and oil impact theft attempted theft breakage of glass falling trees branches aerials subsidence heave landslip accidental damage including accidental damage to under ground services public liability and such other risks ads the landlord or Management Company may reasonably decide form time to time but so far only as such risks (including for the avoidance of doubt those expressly referred to above) remain insurable from time to time in the UK insurance market at reasonable rates*

21. The Tenant's obligation to pay the insurance premium is contained in clause 2 of the Lease as follows:
...the Tenant hereinafter contained PAYING the Ground Rent yearly and also PAYING on demand by way of further rent the insurance rent and Maintenance expenses more particularly described in the Sixth Schedule.

22. The Respondent Landlord and its Managing Agent, Pier Management Limited, arrange the insurance. The apportionment of the insurance is not specified in the Lease.

Attendance at the Hearing

23. The hearing was attended by Mr Jeremy Peachey, the Applicant, Mr David Bland from the Respondent's Legal Department and Mr Matthew McDermott, Counsel for the Respondent.

Applicants' Written Statement of Case

24. At the hearing Mr McDermott informed the Tribunal that Mr Peachey had included in the Bundle correspondence making a "without prejudice" offer by the Respondent to the Applicant and that Mr Peachey had referred to this offer in his statement of case. Mr Peachey had not appreciated that the information should not be divulged to the Tribunal.

25. The Tribunal informed the parties that the offer would be disregarded.

26. In his written statement of case Mr Peachey stated that it had been noted that the premiums had increased dramatically over time. Mr Peachey said that the Respondent Landlord requested alternative quotations when questioned about these increases in 2017. Mr Peachey said the following quotations had been obtained which had been sent to the Respondent who had commented on them. Following these comments, the quotations were updated:

27. Glentworth Insurance (Aviva) quoted in 2017 £2,782.26 updated to £3,795.36. Mr Peachey acknowledged that there were some items such as tree felling which were included in the Landlord's insurance but were omitted from this policy. He pointed out that there were no trees on the site and this firm confirmed that any increases to match these items would be minimal.

28. Towergate Insurance (NIG) quoted in 2017 £3,053.69
Mr Peachey said that this policy was closely aligned to the Landlord's by including items such as terrorism, tree felling and fly tipping.

29. Jelf Insurance (APC) quoted in 2017 £3,296.75.
Mr Peachey said that the broker had confirmed that any minor adjustments could be accommodated with minimal effect on the premium.

30. Mr Peachey said that the Jelf quotation was almost a third of the current premium and yet it was dismissed and at the subsequent renewal Jelf was not asked to quote. He added that due to the Landlord's buying power through a 'block policy' it would be anticipated that the alternative quotations could be further reduced.

31. He further submitted that even with a 'block policy' some tailoring could be justified for sub categories such as the 30 flats in this case. Differences between the current policy and the alternative policies such as £10 million versus £5 million public liability, trees falling, fly tipping, cannabis growing etc could be accommodated with minimal increase in premium. Inequity of the large additional premium far outweighs the supposed risk of these additions to the Landlord.

32. Mr Peachey said that although he had been informed that Amlin, Aviva and QBE had all been asked to quote and had given their best prices he questioned why there was such a substantial difference between the quotations he had obtained and the current premium and suggested that there might be some commission or rebate the Respondent had not revealed. He suggested that a commission might be paid directly to directors or a subsidiary company. The Tribunal said that it could only look at the premium paid and commission received by the corporate body of the Respondent Landlord and its holding company.

33. He said that in view of the current premium being £12,998.40 and the quotation for the equivalent premium of £3,053.69 there was a difference of £9,944.71 to be explained.

Respondent's Written Statement of Case

34. The Respondent Landlord provided a Statement of Case prepared by Mr Bland. In it the Respondent stated that the Insurance is placed by the Freeholder Landlord on a portfolio basis, not by individual property.

35. The Respondent said that it was not specialised in insurance and relied upon its broker who is FCA regulated to arrange insurance and negotiate terms. The broker undertakes market testing on behalf of the Respondent and the respondent is not obligated to renew with either broker or insurer. The insurance for the portfolio has in the past been placed with Allianz, Brit, QBE, Covea, and AXA and the brokers have included been Oxygen, The Insurance Partnership, Jelf Insurance and more recently Locktons.

36. Whilst the Respondent relies on its broker to test the market, it does consider whether insurers and brokers alike are suited to its portfolio and the needs of the portfolio.

37. The Landlord does not derive commission from the insurance for the Blocks in isolation. The Regis Group (of which the Landlord forms a part) does not benefit from this portfolio and it is its ability to bulk buy that enables them to earn a commission of 15% on that portfolio as a whole in return for work done.

38. In return for the commission the Regis Group undertakes work to ease the administrative burden on both the broker and the insurer. This includes the instruction of agents and external surveyors to arrange reinstatement valuations, health and safety surveys, supplying details of such valuations and reports for renewals, advising insurers of health and safety risks (giving rise to potential personal injury claims). alterations (demised and un-demised) and breaches of covenant that may impact on the risk accepted by the insurer, issuing of demands to tenants, copying and providing information to tenants, lenders asset managers and administrators dealing with tenants' assets including (but not limited to) certificates and policy wordings, keeping records for the portfolio on claims experience and advising the Landlords' finance companies accordingly.

39. It was added that it would be fair and reasonable to say that if one of the Blocks were insured in isolation no commission would be payable at all.

40. The insurance is index linked and therefore the premium will increase by a small percentage on each renewal. In addition, there will be increases based on claims experience. The insurance is designed to be a comprehensive 'all risks' policy and the broker has recommended this type of insurance for the portfolio.

41. The Respondent referred to the following cases:

42. *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50.
In this decision it was said that the Court of Appeal held that provided insurance was obtained in the normal course of business it did not have to be the cheapest to be reasonable. It was also acceptable for a large commercial landlord to place insurance on a 'block policy' with a single insurer.

43. The Respondent said that it was not commercially viable or reasonable for the Respondent as a large corporate landlord to obtain insurance for each development separately in order to benefit from the cheapest insurance as it did not have the same flexibility as a private individual. Nevertheless, as a large corporate body it was able to obtain favourable terms and benefits that would not normally be available to a private individual and that such terms are in most cases advantageous to a leaseholder in the event of a claim.

44. *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173
In this decision it was found reasonable that the commercial Landlord should negotiate a 'block policy' and that it was confirmed that the insurance premium need not be the cheapest but should be in line with the market norm. The Respondent submitted that it would be reasonable and sensible to assess the market norm as being an average of all comparable quotes.

45. *Havenridge Limted v Boston Dyers Limited* [1994] 49 EG 111
The judgement of Evan LJ was quoted as follows:
"the fact that the Landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insures might have charged. Nor it is necessary for the Landlord to approach more than one insurer, or to shop around. If he approaches one insurer, being one insurer of repute, and a premium is negotiated and paid in te normal course of business as between them, reflecting the insurer's usual rate for business of this kind then in my judgement, the landlord is entitled to succeed."

Discussion

46. Mr Peachey said that the precedents quoted have different circumstances in that *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50 was between two large corporations, *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173 concerned a converted property of two flats and *Havenridge Limted v Boston Dyers Limited* [1994] 49 EG 111 concerned commercial leases. This case is about Blocks of residential properties.

47. Mr Peachey submitted that the way the Landlord had gone about insuring is not in the normal course of business and therefore the prices are not reasonable as required under the Lease.

48. He said that it was difficult to get precise 'like for like' quotations but the quotations that he had got were as near 'like for like' as made little or no difference and that he had provided each broker with the claims record that the Respondent had provided him with.

49. He said he had sent the quotations and policies to the Respondent who had identified the ways in which the policies were not the same as the Landlord's current policy with AXA. Mr Peachey said he had then sent the Respondent's reply to the respective brokers for comment.

50. Mr Peachey provided an email from Glentworth Insurance in which were set out the points of difference identified by the Respondent's broker and Glentworth's replies with an amended quotation to take account of additional cover that would be provided to make the policies as 'like for like' as possible. The comments and replies were as follows:

51. Respondent's Broker's Comment: Basis of Cover – The Aviva quotation is on a Specified Perils policy. As a result, the insurers are only willing to cover the perils listed in the schedule. The current cover is an All Risks policy and cover every eventuality, unless explicitly stated within their exclusions. This ultimately providing all parties with better all-round protection.
Glentworth's Reply: Aviva policy has been quoted on an "inclusive all risks basis.

52. Respondent's Broker's Comment: Day-One Uplift – Aviva has provided a Day-One Uplift of 20%. AXA offer a greater limit of 50%.
Glentworth's Reply: Declared value uplifted so that overall sum is like for like when 20% day one is applied (£5,393,550).

53. Respondent's Broker's Comment: Property Owners Liability – this has been linked to £5 million, AXA currently offer a greater limit of £10 million.
Glentworth's Reply: Aviva unable to increase to £10 million.

54. Respondent's Broker's Comment: Alternative Accommodation - Aviva have limited cover to 20% of the sum insured. AXA currently offer a greater limit of 33%.
Glentworth's Reply: Aviva have increased cover to 30%.

55. Respondent's Broker's Comment: Un-occupancy – The quote includes an un-occupancy condition which the AXA quotation does not have.
Glentworth's Reply: Portfolio perquisite.

56. Respondent Broker's Comment: Terrorism – Aviva has not included Terrorism
Glentworth's Reply: Aviva have now included terrorism.

57. Respondent's Broker's Comment: Extensions – the following extensions are included in the AXA policy but not the Aviva: Trace and Access, Illegal Cultivation of Drugs, Tree Felling and Lopping, Alterations/Additions, Fly-

tipping up to £100,000, Loss of Metered Gas/Oil/Water/Electric up to £250,000, Replacement Keys/locks up to sum insured.
Glentworth's Reply: Aviva have now included all extensions except Tree Felling/Lopping and Fly-tipping.

58. Mr Peachey also provided an email from Towergate Insurance Brokers in which were set out the points of difference identified by the Respondent's broker and Towergate's replies with an amended quotation to take account of additional cover that would be provided to make the policies as like for like as possible. The comments and replies were as follows:

59. Respondent's Broker's Comment: Basis of Cover – The NIG quotation is on a Specified Perils policy. As a result, the insurers are only willing to cover the perils listed in the schedule. The current cover is an All Risks policy and cover every eventuality, unless explicitly stated within their exclusions. This ultimately providing all parties with better all-round protection.
Towergate's Reply: The perils covered under the NIG policy are widespread and should cover just about every eventuality excluding wear and tear/damp/maintenance issues. Other insurers All Risks policies tend to be very similar to the NIG policy.

60. Respondent's Broker's Comment: Restrictions – Theft by tenant excluded and Damage by tenant excluded.
Towergate's Reply: NIG have agreed to include this at no extra premium.

61. Respondent's Broker's Comment: Alternative Accommodation – This cover is limited by NIG to 24 months. AXA do not have a limit of indemnity.
Towergate's Reply: It is extremely rare (if ever) that a Material Damage claim involving Alternative Accommodation will every carry on for longer than 2 years therefore this indemnity period is sufficient.

62. Respondent Broker's Comment: Conditions – Flat roof/subsidence conditions and un-occupancy conditions within the quote.
Towergate's Reply: There is no flat roof at this property so far as we are aware. Subsidence and Un-occupancy conditions are standard across the board of A rated insurers.

63. Respondent's Broker's Comment: Exclusions – various exclusions when unoccupied – Malicious person, theft, escape of water, glass.
Towergate's Reply: These are standard exclusions for an unoccupied building, however, if the building were to be un-occupied there are specialist markets who could offer full perils at competitive premiums.

64. Respondent's Broker's Comment: Extensions – None of the extensions lister below have been matched within the quotation with AXA's limits which are as follows:
Trace and Access – sum insured
Illegal Cultivation of Drugs - £20,000 (any one event) up to £100,000 any period of insurance
Tree Felling and Lopping - £100,000
Alterations/Additions - £25,000,000

Fly-tipping - £100,000,
Loss of Metered Gas/Oil/Water/Electric - £250,000,
Replacement Keys/locks - sum insured.
Glentworth's Reply: NIG's Trace and access limit is over and above a sufficient figure and is extremely rare (if ever) that the cost of trace and access will even come close to the sum insured limit.
NIG cannot amend their policy limits in respect of the above and ay which are covered all have sufficient limits in place.

65. Jelf did not answer the Respondent's Broker's comments in detail but considered them to be 'nit-picking' and seeking to justify a largely uncompetitive annual premium.

66. Finally, Mr Peachey referred to *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC). He said that in that case HH Judge Stuart Bridge had noted a substantial discrepancy between the quotations obtained by the tenants and the premium charged by the Landlord's insurer which he had held in the absence of explanation to be unreasonable and therefore had found in favour of the tenants. Mr Peachey said that this was a similar situation. He submitted that whereas the cover provided for the quotations he had obtained was not identifiable in all respects to that obtained by the Respondent nevertheless they were as close a match as made no difference.

67. Overall Mr Peachey said that he had provided alternative quotations which matched the cover provided which showed the current premium for the Landlord's insurance to be unreasonable.

68. Mr McDermott confirmed the points made by Mr Bland in his statement of case.

69. He said the cases referred to by the Respondent had held that:
A commercial landlord is entitled to obtain a 'block' or portfolio insurance. The premium for such an insurance policy does not have to be the cheapest provided the landlord or its broker has obtained the insurance at arm's length in the market place with a company of repute. He also quoted Sweet & Maxwell's Service Charges and Management Law and Practice Series which summarised the cases in similar form.

70. Mr McDermott also referred at the hearing to *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC) where HH Judge Walden Smith stated at paragraph 30:
...So long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred.

71. Mr McDermott said that Respondent Landlord in this case had met with those requirements and therefore was entitled to recoup the proportion of the premium paid in respect of the Property.

72. In support of this submission Mr McDermott pointed out that both Lockton and AXA are reputable companies controlled by the FCS. He said that Amlin, Aviva and QBE had been approached but that they could not better the cover and premium provided by AXA.

73. He added that it was only practicable for the Landlord to buy a 'block policy' as it had a portfolio of over 30,000 units. It was always possible for an individual to obtain a cheaper policy in respect of a specific property but overall considering the cover provided at the premium quoted the current 'block policy' offered good value.

74. In response to the Tribunal's questions Mr Bland agreed that the portfolio included very high risk as well as low risk properties in terms of insurance. As to why there was such a difference between the portfolio insurance premium apportioned to the Blocks and the quotations obtained by Mr Peachey, it was submitted by Mr McDermott and the point was confirmed by Mr Bland that the portfolio policy was a better product providing better quality cover for a greater range of risks.

75. In support of this submission the points raised by the Respondent's Broker in the emails were referred to. Mr McDermott said that wherever there was a difference in the amount of cover the Landlord's AXA portfolio policy was always for a greater range of risks and a higher financial amount. He referred in particular to the Property Owner's Liability, the Alternative Accommodation and the Extensions in respect of which he said the quotations obtained by Mr Peachey had not been matched. Also, he said that the Un-occupancy condition imposed by the policies on which Mr Peachey's quotations were based were not present in the AXA policy. He said this was significant because many of the long lease Tenants in the Blocks let their flats on short periodic tenancies in respect of which there are very likely to be voids when the flats were unoccupied and more susceptible to risk.

76. In addition, Mr Mc Dermott pointed out that the Respondent had recorded the following claims, all for escapes of water:
8th August 2008 - £954.00
1st October 2008 – no sum recorded
9th May 2010 - £2,343.83
14th December 2011 – no sum recorded
15th April 2012 - £3,025.00
17th April 2012 – no sum recorded
23rd November 2012 - £3,519.43
1st July 2016 - £1,000.00

77. He said that the quotations obtained by Mr Peachey did not appear to have considered all these claims. He referred to the e mail from Glentworth in which the broker had added a caveat saying "I would also stress that we are not in full possession of all the facts, e.g. the claims experience that AXA are basing their quote on" and that the quotation only referred to a claim amounting to £1,000 dated 1st July 2016 for an escape of water. The Towergate (NIG) quotation only referred to the most recent claim which was not included in the Respondent's list which was a claim of £1,000 for an escape of water dated 1st January 2018.The Jelf quotation only referred to the claims of the 23rd November 2012 for £3,519.43 and 1st July 2016 for £1,000.00.

78. Mr Peachey in reply said that he had provided all the past claims information but that they had only chosen to identify the ones stated for the purposes of the quotation. He added that notwithstanding the problem of water escapes the Blocks were low risk and the Landlord's insurance premium was disproportionate to those risks.

79. In response to the Tribunal's questions Mr Bland said that the portfolio had some commercial premises but was predominantly residential. He said that there was an element of 'swings and roundabouts' with such a large portfolio. There were high risk and low risk properties and the high risk properties would increase the overall premium. However, he said that this was outweighed by the bargaining power of the bulk insurance enabling the Landlord to negotiate a more comprehensive cover for the amount of the premium paid.

80. The Tribunal said that it acknowledged the Landlord's entitlement on grounds of practicality to purchase a portfolio insurance through a broker and in the market place and so at arm's length. It also acknowledged that it may not be the cheapest but considering the portfolio overall may be good value. Nevertheless, it questioned the apportionment of that premium between the high and low risk properties comprising the portfolio.

81. Mr Bland said that the apportionment of the overall premium between the properties of the portfolio was a matter for the broker and was not able to give any further information.

Section 20C Application

82. An application was made by the Applicant under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.

83. Mr Peachey submitted that when he had questioned the level of the premium he had been requested to provide alternative names of brokers and insurance companies which he had done but the brokers he had named had not been asked to quote. He felt had been forced to apply to the Tribunal.

84. Mr McDermott said that the Respondent had acted in accordance with the guidance given in the cases in procuring insurance and so had not acted unreasonably.

Determination

85. The Tribunal considered the evidence and submissions of the parties.

86. The Tribunal considered the cases to which it had been referred. The case of *Havenridge Limted v Boston Dyers Limited* [1994] 49 EG 111 [hereafter *Haveridge*] concerned commercial leases and section 19 of the Landlord and Tenant Act 1985 had no application. The terms of the lease were of particular importance and reasonableness was held not to be an issue. For the purposes of these proceedings the case is authority a) for the landlord not having to obtain

the cheapest premium and b) it being sufficient that the landlord obtains a premium that is representative of the market rate or that it has been negotiated at arms' length in the market place.

87. The case of *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50 confirms for the purposes of residential leases the decision in *Havenridge* that provided the premium is not excessive and has been negotiated in ordinary course of business it will be found to have been reasonably incurred.

88. The case of *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173 [hereafter *Forcelux*] is for these proceedings, authority for the submission that the Respondent is entitled, as a commercial landlord with a very substantial portfolio, to negotiate a 'block policy' for all the Landlord's holdings rather than negotiating individual policies property by property. It was and is here submitted by the Landlord that there are advantages of practicality for the Landlord and more comprehensive cover for the Tenant.

89. In addition, in *Forcelux*, the Tribunal stated that the issue to be determined was whether the premium was "reasonably incurred". In making the determination the Tribunal identified at paragraphs [39] and [40], two questions to be addressed. First, whether the Landlord's actions were appropriate i.e. whether the proper procedure had been followed as mentioned above. Second, whether the amount charged was reasonable considering the evidence in answering the first question.

90. It was said that this latter question was "particularly important" because otherwise "it would be open to any landlord to plead justification for any particular figure...without properly testing the market".

91. In *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC) the above decisions were confirmed and the Tribunal finds, as in that case that" There is nothing to suggest that the insurance was arranged otherwise than in the normal course of business". The Tribunal further notes that the Applicant's main contention is that for essentially the same cover it would be possible to achieve a cheaper rate.

92. The Tribunal then considered the recent case of *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC) [hereinafter *Cos Services*] referred to by the Applicant, Mr Peachey. In that case His Honour Judge Bridge referred to *Waaler v Houslow LBC* [2017] EWCA Civ 45 in which the Court of Appeal referred to *Forcelux* paragraphs [39] and [40] and commented at [33]:

It is true that the member considered the landlord's decision-making process. But the important point is that he did not stop there. He also tested the outcome by reference to what the cost of the cover was on the market. In other words, the landlord's decision-making process is not the only touchstone. The outcome was also "particularly important".

93. The Tribunal accepted that, in the absence of evidence to the contrary, the Respondent Landlord had complied with the "decision-making process". The

Tribunal then considered the evidence submitted by Mr Peachey to assess the outcome. In the absence of evidence to the contrary the Tribunal had no reason to doubt that the overall premium for the 'block' portfolio policy was "reasonably incurred".

94. The Tribunal then, following the decision in *Cos Services*, considered whether the outcome was reasonable i.e. whether the premium payable by the Blocks in one of which was located the Property was reasonable, taking into account the evidence adduced.

95. The Tribunal found that the cover offered under the policies for which Mr Peachey had obtained quotations was essentially the same to that of the cover provided by the Landlord's policy. This was so particularly in relation to the Aviva policy negotiated in its revised form by Glentworth Insurance for which the quotation was £3,795.36.

96. Mr McDermott for the Respondent said an important difference between the policies on which Mr Peachey's quotations were based was the that an un-occupancy condition was imposed which was not present in the Landlord's AXA policy. He said this was significant because many of the long lease Tenants in the Blocks let their flats on short periodic tenancies in respect of which there are very likely to be voids when the flats were unoccupied and more susceptible to risk.

97. The Tribunal noted that un-occupancy did not invalidate the cover in respect of the Aviva policy provided the insurer was informed that the property was unoccupied, that internal and external checks were made of the property every 7 days, unfixed combustible materials and gas bottles were removed and the utilities were turned off at the mains.

98. With regard to the past record of claims the Tribunal accepted that Mr Peachey had informed the brokers and hence the insurers from whom he obtained quotations of all the past claims. It is not known with any certainty why they should have referred to some in the policy schedule and not others.

99. The Tribunal therefore found that the cover offered by the policy negotiated by Glentworth with Aviva was so similar as to be 'like for like' with the Landlord's AXA policy negotiated by Locktons. The tribunal would have found it very helpful if evidence had been given by a representative from Locktons to explain why the amount of the 'block policy' premium apportioned to the Blocks was so much higher than the premium that might be obtained were the insurance negotiated in the open market for the Blocks alone.

100. The terms of the 'block policy' were not so advantageous as to justify a premium increase from £3,795.36 to £12,998.40 particularly when one of the virtues of a 'block policy' for the tenant is that it is supposed to carry a discount.

101. Without hearing any evidence from the broker, the Tribunal could only suppose that in the apportionment of the 'block policy' premium, lower risk properties were bearing a proportion of the premium that was attributable to high risk properties.

102. The Tribunal determined that a reasonable outcome should be based on the premium of £3,795.36 quoted by Aviva for 2018.

103. The Tribunal considered the work carried out by Regis Group in relation to the insurance. The Tribunal found that this work was commonly undertaken or arranged by the Managing Agent for a property the cost of which would appear in the service or maintenance charge. Mr Peachey did not challenge the 15% commission either on the basis that the tenants had been double charged for the work through the maintenance charge or that the commission was excessive. The Application only related to the insurance for the years in issue. Therefore, if a tenant considered that certain costs of the maintenance charge were unreasonable, because of the work carried out by Regis Group such as property valuation and health and safety assessment, then this would be a separate issue and possible application.

104. The Tribunal added 15% commission as it found that no allowance had been made in the premiums for it in the quotations obtained by Mr Peachey. The reasonable premium for 25th March 2018 to 24th March 2019 is determined to be £3,795.36 plus 15% commission of £569.30 = £4,364.66. This is 66.42% (approximately two thirds) less than the premium currently charged by the Landlord. The premiums for the periods 16th July 2016 to 12th July 2017 and 12th July 2017 to 23rd March 2018 (255 days) are therefore reduced pro rata as follows:
The premium for the period 16th July 2016 to 12th July 2017 is reduced to £3,744.57
The premium for the period 12th July 2017 to 23rd March 2018 (255 days) is reduced to £2,838.56.

Section 20C Application

105. The Tribunal having determined to significantly reduce the amounts of the premium charged to the Applicant Tenant the Tribunal find it equitable to make an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.