2035

THE LEASEHOLD VALUAITON TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 SECTIONS 27A AND 20C

Reference number:	LON/00AM/LIS/2005/0070
Property:	117 Cazenove Road, Hackney, London N16 6AX
Applicants:	Sarah Harriet Hoad (Flat 4) Carol Irena Goldwag (Flat 1) Mary Georgiou-Macko (Flat 2) Jane Amanda Austin (Flat 5) Kevin Colin McQueen (Flat 6) Leon Forde and Lindsey Rolfe (Flat 7) Jessica Lucy Pickard (Flat 8)
Respondent:	Sinclair Gardens Investments (Kensington) Limited

Appearances:	Sarah Hoad	For the Applicants
	Mr S Goodman	For the Respondent

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr P M J Casey MRICS
Mrs L Walter MA (Hons)

Date of decision: 20th March 2006

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Reference: LON/00AM/LIS/0070

Property: 117 Cazenove Road, Hackney, London N16 6AX

The Tribunal's decision

1. By an Application dated 22nd June 2005, the Applicants, the lessees of 117 Cazenove Road, Hackney, London N16 6AX ("the property"), applied to the Tribunal for the determination of liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 as amended ("the Act"). The Respondent to the Application is Sinclair Gardens Investments (Kensington) Ltd, the freehold owner of the property. The Applicants also applied for an order under section 20C of the Act.

2. The Tribunal were provided with the lease of Flat 4D. This lease was dated 15th July 1994 ("the lease") and was made between Martin John Henry Fewster as Lessor and Debra Joan Gouge as Tenant. The Tribunal was informed that the leases of other flats in the property are in similar form. The landlord's interest and the tenant's interest are now vested in the Respondents and Miss Hoad respectively. The lease was for the term of 125 years from 25th March 1994.

3. By clause 3 of the lease the Tenant covenanted:

"(1) b. To pay by way of further rent in each year a proportion of the sum expended by the Lessor in keeping on foot the insurance of the property against loss or damage by fire and other risks as are included in a fully comprehensive insurance policy in accordance with its covenant in that behalf hereinafter contained the payment of such yearly rent to be made within 14 days of demand and the proportion payable by the Tenant will be 11% (hereinafter called 'the proper portion')"

"(2) To pay and discharge all existing and future rates taxes duties charges assessments impositions and outgoings and contributions whatever (whether imposed by statute or otherwise and whether of a national or local character) now or at any time during the term payable in respect of the demised premises and any part thereof or by the owner or occupier thereof including the proportion properly attributable thereto of such of the same as may be payable in respect of the property of which the demised premises form part such proportion to be the proper proportion of the Lessor's maintenance and repair expenses incurred in the performance of the Lessor's covenants hereunder as the Lessor may from time to time demand"

4. By Clause 5 of the lease the Lessor covenanted:

"(3) "PROVIDED ALWAYS that the Lessor's performance of this covenant is conditional on the Lessor receiving from the Tenant on demand a full contribution towards the Lessor's costs and expenses reasonably incurred in such performance (such contribution to be the same proportion of the total costs and expenses including Architect's Surveyor's and legal fees as the proper proportion) at all times during the said term to keep the external walls and the load bearing walls and foundations (including the walls forming the cellar or basement of the property) the timbers and roof and chimney stacks and exterior of the property (including drains gutters and external pipes) and the outside common parts including the dustbin area and such boundary walls and fences as belong to the Lessor and the staircases entrance halls and passages in the property ....in good and substantial repair and in proper working order and condition and properly painted decorated or treated and also to keep the structures of the property and all water tanks and cisterns electric wires cables and meters and gas and water pipes and meters and drains and soakaways not forming part nor being in the demised premises in good and substantial order and condition"

Clause 3(5) contains a covenant by the landlord to insure the property. This will be referred to later in this decision.

5. A hearing was held on 14th November 2005 and 11th January 2006. Prior to the hearing the Tribunal inspected the property externally and the common parts internally. Following the hearing in November, directions were issued for production of additional evidence by the parties in respect of the building insurance. At the hearing the Applicants were represented by Miss Sarah Hoad, the lessee of Flat 4D. Mr Stephen Goodman FRICS, Managing Director of First Management Limited, trading as Hurst Managements, represented the Respondent which company manages the property on behalf of the Respondent. Miss Hoad and Mr Goodman provided witness statements and gave additional oral evidence at the hearing.

6. The service charge period to which this Application relates is 25th March 2004 to 24th March 2005. An itemised service charge expenditure sheet was prepared by the landlord. This showed the following expenditure for the service charge year in issue:

	£
Repairs and Maintenance:	1401.75
Gardening	1085.75
Entry phone	153.34
Major works	987.00
Administration	123.37
Terrorism insurance	365.33
Audit	110.00
Buildings insurance	6,019.78
Management fees	1,532.19

7. At the hearing charges for the following items were challenged by the Applicants as not reasonably incurred or not of a reasonable standard. By section 19 of the landlord and Tenant Act 1985:
"(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."

8. The outstanding service charge items challenged were:
(1) Gardening
(2) Major works
(3) Administration
(4) Buildings insurance

Miss Hoad told the Tribunal that for various reasons the Applicants were no longer pursuing their challenge to other items referred to in the Application form.

Gardening

9. The Applicants contended that the gardening charges were excessive for the small size of the garden. The garden area was situated at the front of the property. The gardening contractors were Elite Cleaning & Hygiene Ltd. This company was located in Bedfordshire. The Applicants preferred to use a local contractor. The Applicants did not complain about the standard of gardening service, but considered the charges were excessive for the service provided.

10. The Applicants questioned whether it was reasonable to use a firm of contractors located in Bedfordshire rather than a local firm. Miss Hoad said that she had obtained quotations from two gardening contractors, Joli Gardening and Alex Ball Home and Garden Maintenance. A copy of the quotation from Joli Gardening, dated 24th October 2005, together with a certificate of public liability insurance for Joli Gardening, was exhibited to her witness statement. Joli Gardening were prepared to maintain the front garden at the property on the basis of two visits per month between the months of April to December with one visit per month for the period between January and March. Their charge was £25 per visit as opposed to the current charge of £77 per calendar month plus VAT for two visits per

month. Miss Hoad said that Alex Ball Home and Garden Maintenance had given her a verbal quote of £15 per visit.

11. Miss Hoad said that the Respondent had stated that they would be reluctant to give a key to the common parts to someone that they had not previously vetted. However, she said that there is no need for such a person to access the common parts with a key as they relevant area to be maintained is the front garden area, which is accessible from the driveway.

12. Miss Hoad said that the Applicants were very keen to maintain the garden but when attempts were made to obtain public liability insurance she was told that this was not generally available as a separate policy to individuals and that in the event that she did find an appropriate insurer the premium would be prohibitive. This was the reason that the Applicants were unable to take up responsibility for the maintenance of the garden.

13. Mr Goodman said that Elite's price for the work is £77 per calendar month plus VAT, with fortnightly visits. This equates to £35.53 plus VAT per visit. He said that the landlord was not aware of a gardening contractor for an N16 property who could undertake the work for less than the sum charged. Such a contractor would have to be insured and require minimum supervision. He drew attention to paragraphs 8.11 and 8.12 of the RICS Code, which he said recognize that cleaners and gardeners should have appropriate insurance cover.

14. Mr Goodman said that contractors need to allow travelling time before and after the work and between contracts. They have lawnmowers and other equipment to maintain. Certain plant requires fuel, servicing and electrical re-wiring. It is necessary to transport the equipment to the property, and to remove debris from the property by the use of a van for which there are fuel and maintenance costs. The contractor has overheads such as wages, holiday pay and national insurance. Consumables such as bin bags for leaves and grass cuttings have to be provided. There are dumping charges applicable to all commercial contractors, the normal range being £20 to £40

per load. He had been informed that on one occasion last autumn16 bin bags of leaves were removed in one visit. As part of their fee the gardeners are required to report to the managing agents any items of maintenance required and this reduces the number of visits by the managing agents to the property.

15. In Mr Goodman's opinion, the only person willing to undertake gardening for a lower yearly fee would be a self employed person advertising in the 'local sweet shop' or local newspaper, and such a person is unlikely to have adequate insurance. The landlords would be reluctant to give a key to the common parts to a person not previously vetted by the managing agents or an established cleaning contracting company. The employment of a self employed person would also give rise to additional fees in that, the managing agents would need to tour the 'local sweet shops' to find prospective applicants, read the employment pages in local papers, interview prospective gardeners and investigate references. If a self-employed individual had insufficient other employment he might be deemed a member of the managing agent's staff for tax purposes.

16. Mr Goodman said that on more than one occasion during the past year he had given the residents of the property the opportunity to undertake the gardening themselves, subject to their obtaining public liability insurance, but they had not taken up this offer. The managing agents manage over 15,000 flats and have considerable experience as they supply cleaners and gardeners to approximately 10% of them. He submitted that the costs of gardening are within the band of what are reasonable costs for the works. In respect of the quotation fro Joli gardening, Mr Goodman questioned whether this included such matters as the clearance of leaves and was on a like for like basis as the gardening service provided by Elite.

The Tribunal's decision – Gardening

17. The Tribunal finds that based on the evidence available, the gardening charges, although at the top end of the scale, were reasonable and reasonably incurred. The sum of £1085.75 is

payable by the Applicants in accordance with the terms of the leases.

Major works

18. Miss Hoad said that the Managing Agents had provided her with a quotation from Scorpio Logistics. The work referred to in the quotation was to 'move existing path away from tree roots relocate to a different position. Dig out approximately 1m wide and 6m long, lay hardcore and then lay 100m thick concrete with a brush finish. Take away all debris leaving site clean and tidy'. The price quoted was £987 including VAT. However, the works, which were actually carried out, involved widening the existing uneven path. The existing path was not moved; it was extended and remained as untidy as previously. Miss Hoad said that she agreed that the existing path was too narrow.

19. Miss Hoad told the Managing Agents that the works described in the quotation had not been carried out. The reason that she was given was that the existing path had been widened for health and safety reasons, as the landlord was concerned that users of the bin area could not gain access to the bins without crossing an uneven surface and the bin men could not move the wheelie bins along the old path as the bins were wider than the path. She said that the path extension falls short of the length of the front garden and appears untidy. She contended that the work is shoddy and does not provide an even path for the bins to move along. The works had left the area at the front of the property untidy and a health and safety risk. She contended that the cost of the works were excessive.

20. Miss Hoad submitted that this expenditure falls outside the service charge provisions of the lease. She said that the landlord's covenant is to 'keep...in good and substantial repair..... the outside common parts' and the path was never in disrepair. The works undertaken were an improvement and were unnecessary.

21. Mr Goodman said that it had not been possible to gain access to the bins, situated on the bin area at the front of the property,

without crossing an uneven surface. The bin men were unable to move the wheelie bins, as these were wider than the path. The path is now wide enough for the bins to be moved. The works were necessary for health and safety reasons and to mitigate any possible insurance claim upon the public liability insurance. He said that the Respondent is a major landlord and its liability for insurance claims arising out of trip and fall incidents is formidable. He did not consider that the path looked untidy. The colour of the concrete will weather down to match the other paths on the property. The path would have been a hazard if it had extended to the end of the property so it had been ramped down to follow the line of the existing path.

22. Mr Goodman submitted that the landlord had complied with the requirements of the lease and the RICS Code. The lease included an obligation to keep the outside common parts including the dustbin area in good and substantial repair and condition. The landlord had instructed a Surveyor to prepare a brief specification of works required pursuant to its repairing obligations in the lease. He submitted that the landlord obtained two estimates from competent contractors and made a reasonable decision in selecting the cheapest estimate in the absence of any alternative estimates from the tenants. The consultation provisions of section 20 of the Landlord and Tenant Act 1985 did not apply because the expenditure was below the statutory limit. He submitted that the costs incurred were within a band of reasonable costs for such work.

The Tribunal's decision – Major works

23. The Tribunal considers that the works carried out by the landlord did not constitute an improvement outside the terms of the landlord's repairing obligations. The works were undertaken to comply with the landlord's obligation under clause 5(3) of the lease:
"…..at all times during the said term to keep….. the outside common parts including the dustbin area…..in good and substantial repair and in proper working order and condition".

24. The Tribunal considers that on the evidence available it was reasonable for the Respondent to carry out the works and that the cost of the works is reasonable. The tribunal finds that the charge of £987 is reasonable, reasonably incurred and payable by the Applicants in accordance with the terms of the leases of flats in the property.

Administration

25. The Applicants contended that the major works were an improvement, were of poor quality and were not properly or correctly administered. Miss Hoad submitted that the costs of the administration of the major works contract should have been within the normal management fee.

26. Mr Goodman said that the Surveyors provided services in connection with the major works as detailed in their Invoices and provided a breakdown of work undertaken.

27. Mr Goodman said that the RICS Code recognises that such surveying service fall outside the scope of standard management fees. The fees were charged at 12.5% of the final account.

The Tribunal's decision – Administration

28. The Applicants have not satisfied the Tribunal that the costs of the major works were excessive or unreasonable. On the evidence before the Tribunal there was nothing to point to the conclusion that the Administration costs were unreasonable or unreasonably incurred.

29. The Tribunal finds that the charge of £123.37 for Administration is reasonable and reasonably incurred and payable by the Applicants in accordance with the terms of the leases of the flats in the property.

Buildings insurance

30. The Applicants contend that the buildings insurance premium of £6,019.78 for the service charge year 25th March 2004 to 24th March 2005 is excessive and otherwise unreasonable.

31. In support of this contention, the Applicants had obtained alternative quotations for buildings insurance for the property through a specialist broker, Simmons Gainsford and had also obtained alternative quotations from Ryan Insurance brokers. Copies of the correspondence and quotations were produced.

32. Miss Hoad said that she sent to the broker the ACE insurance schedule for 2005 and requested quotes on a like for like basis. In a letter dated 6th October 2005 from Simmons Gainsford to Miss Hoad, Simmon Gainsford stated: "As we discussed, insurers have been asked to quote on a like for like basis ....". Miss Hoad said that the Simmons Gainsford letter shows that the quotations were on a like for like basis. Miss Hoad said that there was full disclosure to the insurers when the quotation was sought.

33. The quotations set out under cover of the letter dated 6th October 2005 from Simmons Gainsford were:

Insurer	Premium	Excess
Zurich Commercial (Excluding terrorism)	£1,703.99 plus IPT	£1,000 subsidence £100 all other claims
Zurich Commercial (Including terrorism)	£2,070.08 plus IPT	£1,000 subsidence £100 all other claims
Axa Insurance (Excluding terrorism)	£1,669.39 plus IPT	£1,000 subsidence £100 all other claims
Subject to satisfactory subsidence questionnaire		
Norwich Union	Approximately £3,500 therefore declined to confirm quotation due to uncompetitive rates	

34. Terrorism insurance is charged for separately in the service charge and is not subject to challenge by the Applicants in these proceedings.

35. It was stated in a letter dated 8th November 2005 from Simmons Gainsford to Miss Hoad that Axa had withdrawn their quotation following disclosure of an endorsement. Zurich did not require a proposal form to be completed.

36. In a letter dated 2nd November 2005 from Ryan Insurance Group quoted Advent Insurance (underwritten by Lloyds) at £2,496.04 inclusive of IPT. Ryan Insurance Group also quoted Norwich Union at £3,519.54 including IPT.

37. Miss Hoad said that the Managing Agents had told her that there is no claims history for the property. The only explanation that she could think of for the premium being so high is that the Applicants are subsidising other properties in the Respondent's portfolio.

38. It was submitted on behalf of the Applicants that the premium charged of £6,019.78 is so beyond the market rate shown by the quotations that the cost has been unreasonably incurred. They questioned whether the insurance was arranged in the normal course of business and was competitively obtained.

39. Mr Goodman submitted that expenditure on insurance premiums must be reasonably incurred pursuant to section 19(1) (A) of the Landlord and tenant Act 1985. The question to be determined is not whether the expenditure on insurance is the cheapest available but whether the expenditure was reasonably incurred. He submitted that the premiums paid in each year are the reasonable premiums negotiated in the normal course of business.

40. Mr Goodman provided a table of rates per £1000 of insurance inclusive of Insurance Premium Tax. This showed:

Inception	Premium	Cover	Rate per £1000	Rate per £1000
	£	£	Inc Tax £	ex Tax £
Nov 2002	5515.70	805047	6.85	6.01
Nov 2003	5778.25	843367	6.85	6.01
Nov 2004	6019.78	878620	6.85	6.01
Nov 2005	6454.54	939157	6.85	6.01

41. Mr Goodman said that the sums insured are reviewed each year in accordance with the ABI/BCIS House rebuilding cost index that is prepared by the Building Cost Information Service of the RICS for the Association of British Insurers.

42. Mr Goodman produced Insurance Certificates for 2002 /2003, 2003/2004 and 2004/2005. An endorsement was put on the policy in November 2004 as a result of water damage to the balcony roof. The Tribunal were informed that the endorsement has been lifted.

43. Mr Goodman said that the Respondent relies upon Princess Insurance Agencies to satisfy itself as to the reasonableness of the premiums obtained by them for their portfolio policy. Although not expressly disclosed by Mr Goodman in his written statements or submissions, the Tribunal noted from another decision of the Tribunal in Re: 3 Saltoun Road, London SW2 (LON/00AY/LSL/2004/0066) that Mr Goodman, who is the managing director of First Mangement, the Mangaging Agents, was a also director of Cullenglow Limited, trading as Princess Insurance Agencies. It was also noted that the Managing Agents have the same address and registered office as Cullenglow Limited.

44. Mr Goodman said that from time to time before renewal, Princess Insurance Agencies went into the market to obtain quotations on a random selection of properties within the Sinclair portfolio in order to satisfy itself as to the reasonableness of the premiums being charged by the existing insurer. No. 117 Cazenove Road was not included in this sample. He said that is usually carried out in September in each year following receipt of notification of the renewal premiums for the following year. In April 2003 following

enquiries of all the major tariff insurers only ACE SA NV ("ACE") and Zurich Insurance was prepared to offer terms and ACE was the most competitive. In 2004 the most competitive insurance cover was from ACE.

44. Mr Goodman said that in September 2005 the only company including the four companies proposed by the Applicants willing to give a quote in respect of all the properties in the Respondent's portfolio was ACE. He produced a letter dated 9th November 2005 with an attached schedule. He said that he had been informed, but did not state by whom, that each insurer was sent a cover sheet giving the basic details of the building and any claims history. He said that it was becoming increasingly difficult to obtain quotations for insurance and that quotations can fluctuate from day to day or within the same day.

46. Mr Goodman said that all the tenants have direct access to the insurers via Princess Insurance Agencies to make claims. The tenants are sent a copy of the Insurance Schedule each year by Princess Insurance Agencies. ACE pays commission to Princess Insurance Agencies. This is a percentage of the actual premium paid to the insurer. Princess Insurance Agencies undertake brokerage and claims handling in return for the commission paid. The insurance premiums charged to the tenants are the actual premiums charged by the insurer based on its tariff rate. The premium paid to the insurer is below the insurer's normal tariff rate. The premium does not comprise the tariff rate plus commission.

47. He outlined advantages of the landlord insuring its entire portfolio with one insurer. He said that this has the advantage of stability and listed a number of other advantages.

48. In respect of the Applicants' alternative quotes Mr Goodman commented:
Zurich Commercial's Standard and Poors rating is BBB. Axa's Standard and Poors rating is A+. Norwich Union Standard & Poors rating is AA-. Advent's Standard and Poors rating is unknown as they are unwritten by Lloyds. In respect of all the

above it was submitted by Mr Goodman that there is no evidence of the disclosure made to the insurers, there is no evidence that the quotation is available for a commercial property and there is no evidence that that the insurer is aware that the property is converted into eight self contained flats in different occupation and the freeholder has no knowledge of the status and circumstances of each flat and no control over occupation. Mr Goodman stated that quotations might be subject to completion of a proposal form.

49. It was submitted on behalf of the Respondent that:
(1) The landlord is not required to affect the cheapest insurance.
(2) The landlord through Princess Insurance Agencies has affected insurance in the normal course of business with ACE-SA-NV, an insurer of repute.
(3) There is no evidence that any of the alternative insurers will affect insurance once a proposal form is completed.
(4) The test is whether the premium is reasonably incurred. This test is not satisfied simply by comparing the quotations obtained by the Applicants against insurance cover obtained by the Respondent.
(5) The premium paid to ACE is the most competitive insurance its agents can obtain in the market place for the Respondent's portfolio policy.

The Tribunal's decision – Buildings insurance

50. Clause 5(5) of the lease contains a covenant by the landlord:

"To insure and to keep the property (including the demised premises) insured at all times throughout the tenancy in the name of the Lessor whether or not in conjunction with the name or names of any person or persons legally or beneficially interested in the demised premises from loss or damage by fire flood and other risks and special perils normally insured under a comprehensive policy on property of the same nature at the demised premises in some insurance office in a sum equal to the full insurable value thereof from time to time throughout the said term together with Architect's and Surveyors' professional

fees and two years' rent and to make all payments necessary for the above purposes within seven days after the same shall respectively become due and to produce to the Tenants or their agent on demand the policy or policies of such insurance and the receipt for payment ....."

51. In written submissions prepared by the Respondent's Solicitors it was contended that:
"Under the lease the Respondent is entitled to require its entire portfolio to be insured with one insurer on standard terms and conditions with the same renewal dates to ensure that adequate cover is in force for all the buildings owned by it".

52. The Tribunal found that there was such a covenant in *Re: 3 Saltoun Road* mentioned above.
That case is distinguishable from the present case. In the present case there is no provision in the lease that entitles the landlord to require its entire portfolio to be insured with one insurer as alleged. Mr Goodman accepted this at the hearing.

53. Mr Goodman said that at a matter of policy, notwithstanding that there is no provision in the lease entitling or requiring it to do so, the Respondent 'requires' its entire portfolio to be insured with one insurer on standard terms and conditions and with a limited number of renewal dates to ensure adequate cover for all its properties. In his experience when a property has suffered claims it becomes difficult to insure except by the existing insurer, in that insurance companies expect the existing insurer to take the further risk. The Respondent's policy of insuring its entire portfolio with one insurer overcomes such a situation in that the insurer must take on the insurance for all properties irrespective of risk or claims history. However, he accepted that the subject property has no claims history. He accepted that there might be insurers willing to insure the property, which is low risk, in isolation from other properties. However, that was no good to the landlord. N16 is a high-risk area for subsidence claims and the landlord will have low risk properties insured and high-risk properties uninsured in its commercial portfolio. He said that the landlord was not obliged to consider each property and seek individual quotations.

54. In *Viscount Tredagar v Harwood (HL) [1929] AC 72*, Lord Shaw of Dunfermline said that where the landlord owned a large number of properties there were "sound business reasons" for him to insure all his properties with one insurer.

55. Mr Goodman referred to the decision in *Yorkbrook Investments v Batten [1985] 2 EGLR 100*. There is no presumption for or against a finding of reasonableness of costs. Mr Goodman contended that the Applicants had not established a prima facie case. The Tribunal also had regard to the decision of the Lands Tribunal in *Dr Schilling and others v Canary Riverside PTD Limited and others LRX/26/2005*. Having regard to the evidence produced, The Tribunal finds that the Applicants have produced evidence that establishes a prima facie case. It was for the Respondent to meet the Applicants' allegations.

56. The Tribunal does not agree with Mr Goodman's submission that the alternative quotations obtained by the Applicants in 2005 were irrelevant to assessing the reasonableness of the cost of the building insurance obtained in November 2004, and that tenants can never rely on evidence obtained other than at the same date that the landlord obtained its insurance. The Tribunal finds the evidence of the alternative quotations helpful. It is not unusual for the Tribunal to consider evidence of the market at earlier or later dates than the specific date in question, if that is the available evidence. The Respondents, during the period of adjournment between the two hearing days in this case, had not sought to obtain, as a check, alternative quotations for the property from the insurers who had provided quotations for the Applicants, but relied on their general policy of block insurance.

57. The Tribunal accepts Miss Hoad's evidence that she requested Simmons Gainsford to obtain quotations on a like for like manner and had provided the current insurance schedule to the brokers. Simmons Gainsford's letter dated 6th November 2005 confirmed that the basis on which the alternative quotations were sought was a like for like basis.

58. In *Berrycroft Management Co Ltd and others v Sinclair Gardens Investments (Kensington) Ltd [1997] 1 EGLR 47 CA,* the trial judge had decided that the amounts quoted by the Commercial Union were neither unreasonable nor excessive. Lord Justice Beldam said the judge concluded after a thorough review of the evidence that the quotations for insurance from Commercial Union were competitive compared with a quotation obtainable by a single management company acting alone and that the active and responsible management of the agency nominated by Sinclair was, taken overall, beneficial to the lessees. The costs of the insurance were held to be reasonably incurred.

59. In *Forcelux v Sweetman [2001] 2 EGLR 173* the Lands Tribunal, held that section 19(2A) of the Landlord and Tenant Act 1985 (now amended) was not concerned with whether the costs were reasonable but whether they were reasonably incurred. The question was not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge was reasonably incurred. In answering that question, two distinct matters have to be considered. First, the evidence, and, from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the leases, the RICS code and the 1985 Act. Second, whether the amount charged was reasonable in the light of the evidence. The second point was particularly important as if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.

60. The Tribunal finds that under the terms of the leases of the flats in the property, the landlord is not expressly required to insure all his properties with one insurer and does not have an unqualified right to nominate an insurer. However, it is open to the Respondent to make a business decision to insure all of its properties with one insurer, as has occurred in the present case. This does not necessarily or automatically lead to the conclusion that the costs of the buildings insurance for the property are reasonably incurred.

61. The landlord, elected to insure its entire portfolio of properties with one insurer. The Tribunal accepts that, cover for commercial landlords is generally more expensive than that available for owner/occupiers as was stated in the *Forcelux* case. The landlord's policy resulted in a disproportionately higher charge for buildings insurance for this particular property, which has no claims history, than might otherwise have been available, having regard to the alternative quotations provided by the Applicants. There were differences, some significant, between the amounts quoted by ACE and those quoted by Zurich in respect of the sample properties included in the landlord's market testing exercise but none came close to the difference between ACE's rate for the subject property and the quotation from Zurich obtained by the Applicants.

62. There are clear benefits to a landlord in taking out a single portfolio but it was not the intention of the legislature that such benefits be secured at the expense of the tenants. It cannot have been intended that the amount properly payable by a tenant to his landlord through his service charge can be twice or even three times as much simply because his landlord owns a portfolio of properties rather than a single property. With modern computer based property management systems there is little difficulty in arranging separate cover for individual or groups of properties within a portfolio and little or no risk of missing renewal dates and letting cover lapse.

63. The landlord may have problems in obtaining cover or with the costs of cover for properties within a portfolio with poor claims records, but such problems are for those affected by them; there is no reason why tenants in a building with a good claims record should be subsidizing those elsewhere. In this case there is no overall benefit of the tenants as had been found to be the position in *Berrycroft*. The Tribunal finds that the charges for buildings insurance for 2004 to 2005 were not reasonably incurred.

64. A landlord is not obliged to take the cheapest insurance available and there is, from the evidence, quite clearly a fairly wide range in the cost of insurance between different

companies. An insurance premium within the range of this basket of possible costs would not be unreasonable nor possibly a premium above the range by up to 1/3, but in this instance where the quotes obtained by the Applicants from four companies range from approximately £1,700 to £3,200 excluding IPT, £6,000 is clearly way beyond the range and without any explanation as to why that should be. Doing the best it can from the evidence available as to the maximum level of premium which could be regarded as having been reasonably incurred, the Tribunal considers that the reasonably incurred cost for buildings insurance for the service charge year 2004 to 2005 should be £4,000. Accordingly the charge for buildings insurance is limited to £4,000.

65. Summary of decision

Each of the Applicants was and is liable to pay to the Respondent for the service charge year 2004/05 (subject to credit being given for any payments already made) the proper portion as defined in each of the leases of the following sums:

Gardening £1,085.75
Major works £987.00
Administration £123.37
Building insurance £4,000

Application under section 20C of the Act

66. Under section 20C 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 named in the application. On such application being made, the Tribunal may make such order on the application, as it considers just and equitable in the circumstances.

67. Miss Hoad said that the landlord's claim for £6,019.78 for building insurance was 'ludicrous' and in view of the size of the

charge the Applicants were justified in making and pursuing the Application to the LVT for the determination of their liability to pay. The Applicants had tried to resolve the dispute by correspondence. A meeting had taken place with Mr Goodman at the property. Some of the issues had been resolved but the parties had been unable to resolve other issues, including the central issue of the building insurance.

68. Towards the end of the hearing in January 2006, Mr Goodman produced written submissions in respect of the section 20C application. The Respondent's Solicitors in advance of the hearing had prepared these submissions and it is noted that at the end of the submissions it is incorrectly stated that they were served on 11th November 2005. These submissions had not prior to the hearing in January 2006, been supplied to the Tribunal or to Miss Hoad. Mr Goodman was unable to answer questions from the Tribunal relating to the submissions, which were prepared by Solicitors who were not present at the hearing. It was submitted that an order should not be made pursuant to section 20C for the reasons set out in the submissions. Miss Hoad, in an effort to save the costs of an adjournment, addressed the Tribunal as best she could, but given the lack of notice of their content, asked that this be taken into account when considering her submissions.

<u>The Tribunal's decision – section 20C Application</u>

69. The Applicants have been successful in respect of their challenge to the charge for building insurance. Building insurance was the largest item of charge and the evidence and submissions in respect of this item took up the majority of the hearing time before the Tribunal. A number of items of charge were withdrawn at the commencement of the hearing after the Respondent provided the Applicants with information and explanations. The Tribunal, having considered the evidence the parties submissions both in the main Application and in respect of the Application for an order under section 20C considers that in all the circumstances of this case that it is just and equitable to make an order that 50% of the costs incurred in connection with the proceedings before the LVT are not to be regarded as

relevant costs to be taken into account in determining the amount of any service charge payable by each of the Applicants.

CHAIRMAN..... Anne Seifert .....

DATE..... 20th March 2006 .....

Members of the Leasehold Valuation Tribunal:
Miss A Seifert FCI Arb
Mr P M J Casey FRICS
Mrs L Walter MA (Hons)