IN THE LEASEHOLD VALUATION TRIBUNAL
SOUTHERN REGIONAL TRIBUNAL
RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Case Number	CHI/29UH/LSC/2008/0096
Address of Property	St Peter Street, Maidstone Kent
Applicant	St Peter Street (Maidstone) Flat Management Company Limited
Respondent	Freehold Managers (Nominees) Ltd
Date of Inspection & Hearing	25-11-08
Date of Decision	17-12-08
Tribunal Members	Ms H Clarke (Barrister) (Chair) Mr B Simms FRICS

1. **THE APPLICATION**
   The Applicant sought a determination that the sum sought by way of insurance premium for the year 2008 from an insurer nominated by the Respondent was not payable.

2. **THE DECISION**
   The Tribunal decided that it did have jurisdiction to determine whether the insurance costs were reasonably incurred, but that the conclusions reached by the Tribunal would only be binding on the Applicant and the Respondent and not on any tenant of the Property.
   The Tribunal decided on the evidence before it that the insurance costs were reasonably incurred. The Tribunal did not have jurisdiction under the present Application to determine whether a service charge was payable by any tenant in respect of those costs.

3. **THE PARTIES**
   The Applicant was a management company established by the terms of the Leases and was a party to certain mutual and reciprocal covenants with the lessor and the tenants under the Leases. At the time of the Application each tenant of the Property was a shareholder and the directors of the Company were all tenants of the Property. The Respondent owned the freehold reversion on the Leases.

4. **THE LAW**
   The relevant sections of the Landlord & Tenant Act 1985 provide as follows:
   section 18(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.'*
   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'

section 30: ' *"landlord" includes any person who has a right to enforce payment of a service charge.*'

5. **THE LEASES**
The Tribunal had sight of the Lease relating to Flat 188 and the parties confirmed that all the Leases were in the same form. Under the Lease the tenant covenanted with the Lessor and with the management company to pay a proportionate share of the service charge for various items including insurance. The management company was obliged to insure the property in the names of the Lessor, the tenant and itself with "some insurance company of repute" nominated by the Lessor and through the agency of the Lessor, against certain specified risks and "such other risks (if any) as the Lessor or his agents may think fit in the full value thereof (inclusive of Architect's and Surveyor's fees)".

6. **THE INSPECTION**
The Tribunal inspected the exterior of the Property which comprised 230 flats in 22 units, four of which were served by lifts and the remainder by communal stairs, with car parking spaces and garages below. The Property was constructed of brick with timber windows, apparently within the past 10 years, and was located on the riverside at Maidstone.

7. **THE HEARING**
With the agreement of the parties the matter was heard by a two-member Tribunal. A Hearing took place in Chatham and was attended for the Applicants by Mrs Creer, Counsel, and by Mr Mark Jennings, Company Secretary, and Mr Jewll, Director. For the Respondent, Mr Gary Cowen, Counsel, made submissions and called evidence from Mr Alasdair Wardrop, Divisional Director, Oval Insurance Broking Ltd. Some lessees also attended to observe, including Mr and Mrs Pierre and Mr Best.

8. **EVIDENCE AND SUBMISSIONS**
The case for the Applicant was that the insurance had been unreasonably incurred. The Applicant had secured its own policy from Norwich Union which was cheaper than that procured by the Respondent. The Respondent had nonetheless gone ahead and arranged for insurance to be placed under its block policy and had demanded repayment first from the Applicant and then directly from the tenants. Several of them had refused to pay. The Respondent's insurance was too expensive and included unnecessary items such as employer's liability cover and loss of rent. This was not required because the Applicant ensured that everyone who worked at the property had their own cover. In any event if employer's liability cover were ever required it would take less than a day to change the Applicant's procedures and add the cover to the policy. The Applicant had tried to find out whether the cost included any element of commission and whether the Respondent had 'shopped around' but had not had proper replies to its enquiries. It considered that the policy cost included costs attributable to the risks associated with other properties under the block policy.

9. The Respondent's primary case was that the Tribunal had no jurisdiction to consider the insurance premium because it was not a service charge, being a payment which the Applicant management company was liable to make to the Respondent under the terms of the Lease. The Tribunal could not interfere with

the terms of the Lease as to selection of insurer and the risks to be covered. If and when the insurance cost was to be recovered from the tenants by the Applicant as service charge, then any challenge to the payability of those service charges would easily be met by the explanation that the Applicant had been obliged under the Lease to pay out that sum to the insurer.

10. In any event, the Respondent submitted that the evidence showed that the insurance was placed at arms length with a reputable insurer (Zurich). It uses a block policy because it has a large portfolio of thousands of properties. That fact alone allowed the Respondent to secure very advantageous cover which had the benefit of the 'average' clause having been deleted; the effect of this was that the full reinstatement costs of the buildings would be paid irrespective of the current valuation.

11. **REASONS FOR DECISION**
On the question of jurisdiction, the Tribunal took the view that the principal issue was whether the cost of the insurance was a cost incurred by or on behalf of a landlord, in connection with a matter for which tenants were liable to pay a variable service charge, within the meaning of s18. Provided this test was satisfied, the Tribunal had jurisdiction under s19 to consider whether the cost was reasonably incurred.

12. Under the provisions of the Lease, insurance was quite clearly one of the matters for which the tenant was liable to pay service charge, in an amount which varied according to the cost of that insurance. The Tribunal directed itself that the Applicant company came within the definition of landlord under s30 of the Act since by virtue of the Lease it was entitled to enforce the tenant's covenant to pay service charge; neither party argued to the contrary.

13. The terms of the Lease required that the Applicant shall enter into and shall pay for a contract of insurance with a third party insurer, and shall do so through the Agency of the landlord. The Tribunal took the view that contrary to the Respondent's submission, this did not require the Applicant to make any payment to the Respondent. Even if the insurance premium was received by a broker, who may be described as the agent of the landlord in the sense that he would place the insurance on behalf of the landlord and the management company, the broker would receive that payment in his capacity as agent for the insurer.

14. If this construction of the Lease were incorrect, the definition of relevant costs under s18(2) would still nonetheless be satisfied as between the Applicant and the Respondent, because the cost would be incurred by the Applicant 'in connection with' insurance, for which service charge is ultimately payable by the tenants. It is not a requirement of the statute that the Applicant should be liable to pay service charge. The Tribunal therefore found that the cost of the insurance fell within the scope of s18 and was a 'relevant cost' for the purposes of s19.

15. The evidence before the Tribunal showed that the Respondent had issued a service charge demand to the tenants for the amount of the insurance premium. Whilst s27A gives the Tribunal jurisdiction to determine the amount payable by way of service charge, the Application presently before the Tribunal did not name any tenant of the property, whether as applicant or respondent. The Tribunal

accordingly took the view that the issues at hand could only be determined as between the Applicant management company and the Respondent reversioner, both of whom were to be regarded as landlords for the purposes of service charge determinations, and that the conclusions reached by the Tribunal would therefore not be binding on any tenant. The Tribunal was therefore not able to and did not make any determination about the amount of service charge that could or should be demanded from or paid by any tenant. In the event that any tenant or any other person might seek such a determination, it may be desirable that a copy of the present decision should be attached to any application which may be made.

16. The Tribunal then considered the insurance costs. The terms of the Lease permit the Respondent to decide which risks should be insured against. Whilst the Applicant argued that employer's liability insurance was unnecessary, as all work on site was carried out by contractors with their own insurance, the evidence before the Tribunal given by Mr Wardrop showed that the inclusion of employer's liability cover did not add appreciably to the cost of the premium, and the same applied to 'loss of rent' cover. The cover arranged by the Respondent's broker also included the deletion of the 'average' clause, with the effect, said the Respondent, that the full reinstatement costs of the buildings would be paid irrespective of the current valuation. The Tribunal considered that there might be other ways of achieving the same end, but again the Tribunal took the view that the evidence showed that the premium had not been significantly affected by the deletion of this clause. The Respondent had secured this level of cover by virtue of its size as a property owner. It could not therefore be said that any part of the premium had been unreasonably incurred insofar as it reflected a risk that need not to have been covered.

17. There was no evidence before the Tribunal that the premium cost had been inflated by any element which ought not to be borne by the tenants, such as commission payments, or by subsidising the cost of insuring more risky properties elsewhere. The evidence from Mr Wardrop, which was not countered by any conflicting evidence from the Applicant, was that other insurers were asked to quote for the same level of cover but declined to do so. Whilst it may have been desirable (although not essential) for the Respondent through its broker to have made such enquiries before the insurance was placed, rather than shortly before the hearing, the position at the hearing was that no evidence was provided to indicate that the same cover could have been obtained more cheaply. No suspicion therefore attached to the premium incurred by the Respondent nor was there evidence of any special feature of the transaction which took it outside the normal course of business. Mr Wardrop's evidence was that the rate used by Zurich to calculate the premium based on 10p in £100 was a mid-range rate; he was aware that other insurers would make calculations based on 20p in £100. These figures accorded with the expert knowledge and experience of the Tribunal.

18. The Tribunal directed itself that the appropriate legal test was conveniently set out in *Havenridge Ltd v Boston Dyers Ltd [1994] 2 EGLR 73* to which both parties referred:

" The limitation in my judgment can best be expressed by saying that the landlord cannot recover in excess of the premium which he has paid and agreed to pay in the ordinary course of business as between the insurer and himself. If

the transaction was arranged otherwise than in a normal course of business for whatever reason then it can be said that the premium was not properly paid having regard to the commercial nature of the leases in question or equally it can be supposed that both parties would have agreed with the officious bystander that the tenant should not be liable for a premium which had not been arranged in that way.
If this is the correct test, as in my judgment it is, then 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 insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer or to shop around. If he approaches only one insurer, being one insurer of repute, and a premium is negotiated and paid in the normal course of business as between them reflecting the insurer's usual rate of business of that kind, then in my judgment the landlord is entitled to succeed. The safeguard for the tenant is that if the rate appears to be high in comparison with other rates that are available in the insurance markets of the time, then the landlord can be called upon to prove that there was no special feature of the transaction which took it outside the normal course of business."

19. On the evidence the Tribunal therefore determined that the cost of the insurance premium arranged by the Respondent through its brokers was reasonably incurred.

Signed---

Dated--17-12-08