

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/24UB/LIS/2010/0042**

**REASONS**

**Application** : Section 30A and Paragraph 8 of the Schedule to the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

**Applicant/Leaseholder** : Mr Alan Devine

**Respondent/Landlord** : Ashby’s Eling Brewery Co Limited

**Premises** : 287 Cranbourne Lane, Basingstoke, Hampshire RG21 3NU

**Date of Application** : 15 April 2010

**Date of Hearing** : considered by the Tribunal on 16 June 2010 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with directions given by the Tribunal on the 29 April 2010

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr D L Edge FRICS, and Ms T Wong

**Date of Tribunal’s Reasons** : 16 June 2010

**Introduction**

1. This application by the Applicant/Leaseholder is expressed to relate to buildings insurance for 2009 to 2010 and subsequent years and was made on a form appropriate for an application about the payability of service charges under section 27A of the 1985 Act. However, the appropriate statutory provisions which enable the Applicant/Leaseholder to apply to the Tribunal for a decision about insurance effected by the Applicant/Leaseholder are section 30A and paragraph 8 of the Schedule to the 1985 Act and the Tribunal is determining this application under those provisions accordingly
2. The grounds of the application were stated to be that :
  - a. the Applicant/Leaseholder was being forced to pay £365.15 for only buildings insurance
  - b. he had been quoted insurance from reputable companies for in the region of £150 a year
  - c. also he was aware that different leaseholders were being charged by the

- Respondent/Landlord different prices for their buildings insurance, one about £190, and another £260
- d. he disputed that he could only insure through the Respondent/Landlord because the Respondent Landlord had its own approved company : clause 5(9) of the lease
  - e. however, he did know of other leaseholders who had different insurance companies
  - f. during the year 2008 to 2009 he had opted for alternative buildings insurance through Tesco
  - g. the Respondent/Landlord said that this was not approved and applied for forfeiture
  - h. he contacted solicitors but nothing was resolved
3. The Applicant/Leaseholder's application was for the Tribunal to determine the following issues :
- a. whether £365.15 was excessive for buildings insurance alone
  - b. why different leaseholders were paying different costs for the same insurance on identical properties
  - c. why the Applicant/Leaseholder could not opt for his own reputable insurance company
  - d. why other leaseholders in the same type of property had been allowed alternative insurers when the Applicant/Leaseholder had not
  - e. how the yearly cost was calculated

#### **Paragraph 8 of the Schedule to the 1985 Act**

4. The material parts of paragraph 8 are as follows :
- (1) *This paragraph applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord*
  - (2) *The tenant or landlord may apply to a county court or LVT for a determination whether-*
    - (a) *the insurance which is available from the nominated or approved insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or*
    - (b) *the premiums payable in respect of any such insurance are excessive*
  - (3) *No such application may be made in respect of a matter which -*
    - (a) *has been agreed or admitted by the tenant*
    - (b) *.....*
    - (c) *.....*
  - (4) *On an application under this paragraph the court or tribunal may make –*
    - (a) *an order requiring the landlord to nominate or approve such other insurer as is specified in the order, or*
    - (b) *an order requiring him to nominate or approve another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order*

#### **Documents**

5. The documents before the Tribunal are those referred to in this determination

### **Inspection**

6. The Tribunal inspected the exterior of the Premises on 16 June 2010. Mrs Natasha Devine, wife of the Applicant/Leaseholder, was present
7. The Premises were the maisonette on the ground floor on the right-hand side of a two storey building comprising four maisonettes. The building appeared to have been built in the early 1960's. It was brick faced, with part Tyrolean render to the front, and with a tiled pitched roof. At the rear was a small semi detached brick shed (again in a block of four). There was a small rear garden laid to grass. There was no garage
8. The Tribunal also inspected the exterior of 111 Sheppard Road, referred to in the correspondence before the Tribunal. That property appeared also to be a ground floor maisonette on the right-hand side of a semi-detached building comprising four maisonettes, and appeared to be materially identical to the building of which the Premises formed part. Sheppard Road and Cranbourne Lane were at right angles to each other. 111 Sheppard Road and 287 Cranbourne Lane were very close to each other, being separated only by the triangular-shaped piece of land on the corner of Sheppard Road and Cranbourne Lane, a block of garages and an electrical sub-station

### **Lease**

9. The lease attached to the Applicant/Leaseholder's application is dated 31 January 1963 and relates to 289 Cranbourne Lane, which is stated to be the upper maisonette. There is no explanation in the papers before the Tribunal why the lease for the Premises has not been submitted. The Tribunal has assumed for the purposes of these reasons that the lease of the Premises, namely 287 Cranbourne Lane, is in materially similar terms to the lease for 289
10. Clause 5(9) contains a covenant on the part of the lessee in the following terms :

*5(9) to insure and keep insured the demised premises at all times throughout the term in the joint names of the lessee and the lessors from losses or damage by fire accident aircraft lightning explosion storm and tempest and such other risks as the lessors may from time to time reasonably require in the full reinstatement value thereof plus 8 1/2% surveyors and architects fees in such insurance office of repute as shall from time to time be approved by the lessors.....*

### **Correspondence and other documents**

11. A letter from the Respondent/Landlord dated 26 May 2007 addressed to Mr P Hardie at 111 Sheppard Road, Basingstoke stated that his insurance policy fell due for renewal shortly and asked for a copy of the new policy as soon as it was received by him

12. An RIAS schedule of insurance cover showed the policyholder as Mr Hardie, the period of insurance as 26 June 2007 to 25 June 2008, the buildings cover as “up to” £1 million, and the insurance premium as £83.27, plus £53.85 for contents cover up to £50,000, plus legal expenses of £17.00, making a total premium of £140.42. Endorsed on the copy schedule before the Tribunal were the manuscript words “an accepted insurance policy by Ashby Eling Brewery”
13. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 30 March 2006 stated that the Respondent/Landlord had increased the sum insured in respect of the Premises to £135,000 and that the premium due was £361.45
14. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 21 March 2007 stated that the insurance “charge” for the coming year was £361.45
15. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 23 March 2007 stated that from that date the Applicant/Leaseholder would be purchasing his building and home insurance from another provider
16. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 2 November 2007 stated that the insurance premium of £361.45 was overdue and should be settled without further delay
17. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 14 November 2007 stated that he had purchased home and contents insurance from another provider and that the current policy had begun on 23 March 2007
18. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 16 November 2007 stated that they had no record of having received the Applicant/Leaseholder’s letter of 23 March 2007 and asked him to settle the insurance premium of £361.45
19. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 22 November 2007 stated that he had had his own insurance since 23 March 2007 and enclosed a copy of his own insurance schedule
20. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 28 November 2007 stated that the terms of the lease were most specific about how the Premises were insured. The insurance arranged by the Applicant/Leaseholder did not comply. However, if he forwarded a copy of his insurance schedule they would consider further. If the policy did not comply with the terms of the lease they would require the premium requested to be paid in full
21. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 6 December 2007 stated that if for any reason the Respondent/Landlord claimed that the insurance policy did not comply with the terms of the lease the Applicant/Leaseholder would like a full explanation

22. A Tesco home insurance schedule showed the policyholder as the Applicant/Leaseholder, the period of insurance as 23 March 2007 to 22 March 2008, the buildings insurance sum as £1 million, the premium, including contents and personal possessions cover, as £173.25, plus family legal protection of £21.00, making a total premium of £194.25
23. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 19 December 2007 referred to a letter from the Respondent/Landlord dated 12 December 2007 [not before the Tribunal] and stated that that letter had not given a clear indication why his insurance policy was not approved
24. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 24 December 2007 stated that he had still not complied with clause 9 of his lease or settled the insurance premium requested and that they had no alternative but to serve a notice upon him
25. A notice from the Respondent/Landlord entitled "intention to forfeit under s146 of the Law of Property Act 1925" threatened forfeiture if within 14 days the Applicant/Leaseholder did not pay the insurance premium of £361.45 plus costs of £117.50
26. A letter from the Respondent/Landlord to Wills Chandler dated 25 January 2008 stated that the Respondent/Landlord had insured the property for the year to 21 April 2008, that the Applicant/Leaseholder had stated that he had written on 23 March advising that he was arranging his own insurance, that no such letter had been received, and that the Applicant/Leaseholder seemed to have arranged his new insurance with total disregard to the provisions of the lease
27. A letter from Wills Chandler letter to the Respondent/Landlord dated 12 February 2008 entitled "draft" stated that the Applicant/Leaseholder had insured the Premises with Tesco. He was not obliged to insure the Premises through the Respondent/Landlord. Other tenants had taken out insurance with other insurance providers without the Respondent/Landlord requiring renewal through themselves
28. A letter from the Respondent/Landlord to Wills Chandler dated 29 February 2008 stated that clause 9 of the lease detailed how the property was to be insured
29. A letter from Wills Chandler letter to the Respondent/Landlord dated 14 March 2008 entitled "without prejudice save as to costs" stated that the Applicant/Leaseholder was prepared to insure the Premises for 2008 to 2009 through the Respondent/Landlord's insurance provider, provided that the Respondent/Landlord would take no further action in respect of the insurance for 2007 to 2008
30. A letter from the Respondent/Landlord to Wills Chandler dated 20 March 2008 stated that the premium required to insure the Premises for the year to 21 April 2009 amounted to £362.95 and that they would agree not to continue their forfeiture action on the basis that it was settled in the near future
31. A letter from the Respondent/Landlord to Wills Chandler dated 2 April 2008 enclosed a copy

of the Norwich Union policy document

32. A letter from Wills Chandler letter to the Respondent/Landlord dated 21 April 2008 enclosed a cheque for £362.95 and requested that the Applicant/Leaseholder's insurance be dealt with by Norwich Union
33. A letter from the Respondent/Landlord to Wills Chandler dated 22 April 2008 acknowledged receipt of the cheque, stated that they had arranged for the insurance of the Premises to be added to their block policy, and stated that their forfeiture action against the Applicant/Leaseholder had now been halted
34. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 18 February 2009 stated that on expiry, in April, of the current buildings insurance, he would not be renewing their policy. At the appropriate time he would forward a copy of his new insurance documents which would be from a reputable underwriter
35. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 20 February 2009 stated that if he wished to ensure the property himself all the terms of the lease had to be complied with including insuring the property with Norwich Union
36. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 23 February 2009 asked where in the lease it was stipulated that he had to insure the property with Norwich Union
37. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 25 February 2009 stated that clause 9 of the lease gave details of how the property had to be insured and that the approved insurer was Norwich Union
38. A letter from the Respondent/Landlord to the Applicant/Leaseholder dated 21 March 2009 stated that the insurance "charge" for the Premises for the coming year was £365.15, asked for settlement, and stated that the cover was now £135,000 and that it was the Applicant/Leaseholder's responsibility to ensure that it was sufficient and to let the Respondent/Landlord know if the Applicant/Leaseholder would like it increased
39. A letter from the Applicant/Leaseholder to the Respondent/Landlord dated 14 April 2010 enclosed a cheque for the sum of £365.15 for buildings insurance for the Premises for the period 21 April 2010 to 20 April 2011, and asked for an up-to-date copy of the insurance schedule and an invoice showing the breakdown of costs for buildings insurance
40. A Norwich Union property schedule showed the policyholder as the Respondent/Landlord, the property insured as the Premises, the period of insurance as 21 May 2008 to 21 May 2009, the building sum insured as £135,000, and the lessee as the Applicant/Leaseholder

#### **Authorities**

41. In **Viscount Tredegar v Harwood** [1929] AC 72 the tenant was obliged to insure her house

in the Law Fire Office or in some other responsible insurance office to be approved by the landlord. The tenant insured instead with another company. The landlord had a very large number of other houses and insisted that for estate management reasons it was essential that all his tenants should insure in the same office

42. The House of Lords held that the primary obligation on the tenant was to insure with the Law Fire Office; that the landlord had an absolute right to withhold his approval of an alternative office without giving reasons; and that, in any event, the grounds of the landlord's disapproval were reasonable
43. Lord Shaw of Dunfermline stated that with so many properties the difficulty for the landlord was to check for failure of renewals, and the point would become very complex if they were insured in many different offices. With a simple working arrangement with one office simplicity and accuracy were promptly secured

#### THE TRIBUNAL'S DECISION AND REASONS

44. The Tribunal makes the following findings, having considered all the evidence before it in the round, and in the light of the decision of the House of Lords in the case of **Viscount Tredegar v Harwood** already referred to :
  - a. clause 5(9) of the lease requires the Applicant/Leaseholder to insure the Premises with an insurer of repute approved by the Respondent/Landlord
  - b. it is not open to the Respondent/Landlord under clause 5(9) of the lease to insist, as the Respondent/Landlord appears from the correspondence to have done in the past, on the Respondent/Landlord insuring the Premises and requiring the Applicant/Leaseholder to pay a premium to the Respondent/Landlord
  - c. on the other hand, it is not open to the Applicant/Leaseholder under clause 5(9) of the lease to insure the Premises, as the Applicant/Leaseholder appears from the correspondence to have done in the past, without the approval of the Respondent/Landlord, even if the Applicant/Leaseholder's proposed insurer is an insurer of repute
  - d. clause 5(9) of the lease does not contain a condition that the Respondent/Landlord's approval is subject to a test of reasonableness
  - e. the correspondence before the Tribunal indicates that the Applicant/Leaseholder has paid the following sums by way of insurance premium for the Premises :
    - £194.25 to Tesco for the year March 2007 to March 2008 (noted on the Tesco insurance schedule)
    - £362.95 to the Respondent/Landlord for the year April 2008 to April 2009 (sent with the letter from Wills Chandler dated 21 April 2008)
    - £365.15 to the Respondent/Landlord for the year April 2009 to April 2010 (acknowledged by the Respondent/Landlord's letter dated 22 April 2009)
    - £365.15 to the Respondent/Landlord for the year April 2010 to April 2011 (sent with the Applicant/Leaseholder's letter dated 14 April 2010)
  - f. the latter payment is not to be taken as an agreement or admission by the

Applicant/Leaseholder for the purposes of paragraph 8(3)(a) of the schedule to the 1985 Act because the following day the Applicant/Leaseholder made the current application to the Tribunal

- g. although the application refers to insurance for the year 2009/10 and for the year 2010/11, it is clear from the use of the present tense in the wording of paragraph 8(2) of the schedule to the 1985 Act and from the nature of the orders available to the Tribunal under paragraph 8(4) of the schedule to the 1985 Act that the Tribunal has jurisdiction to consider only the current insurance for the year 2010/11
- h. *the question whether the insurance available from the Respondent/Landlord's approved insurer for insuring the Premises is unsatisfactory in any respect*
- i. the test under paragraph 8(2)(a) of the schedule to the 1985 Act is not whether the insurance available from the Applicant/Leaseholder's choice of insurer is satisfactory, but whether the insurance available from the Respondent/Landlord's approved insurer is unsatisfactory
- j. the Applicant/Leaseholder's choice of insurer for the Premises for the year March 2007 to March 2008 was Tesco
- k. the Respondent/Landlord's choice of insurer for the Premises has at all material times been Norwich Union
- l. Mr Hardie's choice of insurer for 111 Sheppard Road for the year June 2007 to June 2008 was RIAS, and, although the Tribunal does not have a copy of the lease of those premises nor any evidence whether the insurance provisions in that lease are in the same terms as clause 5(9) of the lease of the Premises, it appears from the Respondent/Landlord's letter to Mr Hardie dated 26 May 2007 and from the manuscript endorsement on the RIAS insurance schedule that Mr Hardie arranged the insurance and that the Respondent/Landlord approved RIAS as the insurer
- m. in relation to the Norwich Union insurance schedule for the year May 2008 to May 2009 neither the wording of the extent of the insurance cover, which appears to be more extensive than the wording in either the Tesco insurance schedule or the RIAS insurance schedule before the Tribunal, nor the sum insured of £135,000, appears to be unsatisfactory
- n. *the question whether the premiums payable in respect of any insurance available from the Respondent/Landlord's approved insurer are excessive for the purposes of paragraph 8(2)(b) of the schedule to the 1985 Act*
- o. the only evidence before the Tribunal in this respect is as follows :
  - the premium paid by Mr Hardie to RIAS in relation to 111 Sheppard Road for the year 2007/8 for buildings cover of up to £1 million was £83.27 plus £17.00 for legal expenses cover, according to the RIAS insurance schedule, which had no details of any applicable excesses or of any limitations
  - the premium paid by the Applicant/Leaseholder to Tesco in relation to the Premises for the year 2007/8 for buildings cover of £1 million, contents and personal possessions was £173.25 plus £21 for family legal protection, according to the Tesco insurance schedule, which listed applicable excesses
  - the premiums paid by the Applicant/Leaseholder to the Respondent/Landlord in relation to the Premises for the years 2008/9, 2009/10 and 2010/11 were £362.95, £365.15, and £365.15 respectively for buildings cover of £135,000 for each of the years 2006/7 (Respondent/Landlord's letter 30 March 2006), 2008/9 (Norwich Union



- insurance schedule, which listed applicable excesses, and stated that legal expenses were not insured), and 2009/10 (Respondent/Landlord's letter 21 March 2009)
- there is no evidence before the Tribunal about the buildings cover figure under the Norwich Union insurance for 2010/11, but, as the premium for that year is the same as the premium for the previous year, and the buildings cover figure for the previous year was £135,000, the Tribunal is proceeding on the assumption that the buildings cover figure remains the same for 2010/11, namely £135,000
  - the Premises have been insured under the Respondent/Landlord's block policy (Respondent/Landlord's letter dated 22 April 2008) and there is no evidence before the Tribunal about the level of premium which would be payable by the Applicant/Leaseholder to Norwich Union if the Applicant/Leaseholder were himself to insure the Premises direct through Norwich Union, after approval by the Respondent/Landlord, under clause 5(9) of the lease
- p. the premium required by the Respondent/Landlord for the Norwich Union insurance for the year 2010/11, namely £365.15, is excessive in that :
- it is more than four times the premium for buildings cover shown in Mr Hardie's RIAS insurance schedule relating to 111 Sheppard Road, which the Tribunal has found to be a materially identical property, for the year 2007/8, despite being for buildings cover of £135,000 compared with "up to" £1 million
  - it is more than twice the premium for buildings cover shown in the Tesco insurance schedule relating to the Premises for the year 2007/8, despite being for buildings cover of £135,000 compared with £1 million
  - it is considerably more than the Tribunal, relying on its collective knowledge and expertise in this respect, would expect for a premium for insuring the Premises for the year 2010/11
- q. in any event, for reasons already given, the fact that the Respondent/Landlord has insured the Premises and required payment of the premium from the Applicant/Leaseholder is contrary to the terms of clause 5(9) of the lease, which requires the Applicant/Leaseholder to insure the Premises with an insurer of repute approved by the Respondent/Landlord
- r. there is no evidence before the Tribunal about the identity of the Applicant/Leaseholder's current choice of insurer for the Premises, subject to the Respondent/Landlord's approval, but no doubt the Applicant/Leaseholder would obtain comparative quotations for like-for-like cover from Norwich Union (as the Respondent/Landlord's approved insurer), Tesco (as the Applicant/Leaseholder's previous choice of insurer), and RIAS (as Mr Hardie's previous choice of insurer, apparently approved by the Respondent/Landlord), in the light of the Applicant/Leaseholder's comments in the application and in the correspondence, before seeking the Respondent/Landlord's approval
- s. Norwich Union, Tesco, and RIAS are all, to the Tribunal's collective knowledge and expertise in this respect, generally regarded as insurers of repute
- t. in all the circumstances, it is appropriate for the Tribunal to order that, in the event that the Applicant/Leaseholder is unable to obtain a satisfactory personal quotation from Norwich Union to insure the Premises direct, subject to approval in that respect from the Respondent/Landlord pursuant to clause 5(9) of the lease, the Respondent/Landlord be required to approve an application by the Applicant/Leaseholder to insure the Premises

direct through either Tesco or RIAS

**Order**

45. The Tribunal orders that, in the event that the Applicant/Leaseholder is unable to obtain a satisfactory personal quotation from Norwich Union to insure the Premises direct and an approval in respect from the Respondent/Landlord pursuant to clause 5(9) of the lease, the Respondent/Landlord is required to approve the Applicant/Leaseholder insuring the Premises direct through either Tesco or RIAS

Dated 16 June 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor