FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/42UD/LSC/2019/0055**
Property	**:**	**17 & 18 Henley Court** **Henley Road** **Ipswich** **Suffolk** **IP1 3SD**
Applicant	**:**	**Barry Wayne**
Represented by	**:**	**In person**
Respondent	**:**	**Henley Court RTM Co Ltd**
Represented by	**:**	**Mr Richard Strutt, Director**
Type of Application	**:**	**Application for the determination of the reasonableness and payability of service charges pursuant to s.27A Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Tribunal Judge S Evans** **Mrs M Wilcox BSc MRICS**
Date & venue of Hearing	**:**	**12th February 2020,** **Ipswich Magistrates Court**
Date of decision	**:**	**25th February 2020**

DECISION

The Tribunal determines that:

(1) The relevant cost for insurance for 2018/2019 is capped at £9381.67;

(2) The relevant cost for insurance for 2019/2020 is allowed in the sum of £9381.67;

(3) No order is made on the Applicant's application for an order under s.20C/ para. 5A, on the express concession by the Respondent that it will not seek to add any costs of these proceedings to the service charges;

(4) No order is made on the Applicant's application for his costs of the application and for the hearing fee to be paid by the Respondent.

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of costs incurred by way of service charges pursuant to an application made under s.27A of the Landlord and Tenant Act 1985 on 21st August 2019.

Parties and Property

2. The Applicant is the leaseholder of the Property, being 2 top-storey flats in a 3 storey block of 42 flats in the centre of Ipswich town.

3. The Respondent is a Right to Manage Company registered on 29th February 2019, with a number of directors who are also leaseholders.

Background

4. The Applicant was previously a director of the Respondent but was not re-elected in 2010, and so resigned. He manages his own portfolio of about 120 properties.

5. Since at least 2018 the parties' relationship has not been good, resulting in acrimonious correspondence. Much of the issue has centred on the matter of insurance, and provision of other information, with the Applicant obtaining quotes for what he says is a reasonable sum in respect of building insurance, and the Respondent continuing to insure at higher sums through Zurich Insurance PLC, as its predecessors had done.

6. On 29th September 2018 the Respondent obtained an Insurance Schedule with Zurich Insurance PLC, insuring it as the property owner of the 42 flats, at a premium of £10,548.72. That premium includes £474.50 for terrorism cover, and IPT of £1130.22. The premium was based on a declared buildings value of £6.5M.

7. After the insurance was placed, the Respondent obtained a building revaluation from David Knights MRICS of David Brown & Co (Estate Agents) Ltd, who gave an opinion of a declared value of £5.05M, excluding VAT.

8. At an AGM of the Respondent Company on 27th June 2019, the Applicant complained of the high insurance premium.

9. On 21st August 2019 the Applicant issued this application, seeking determination of the reasonableness of insurance charges payable for both 2018 and 2019.

10. On 5th September 2019 Ferndale Insurance Services Ltd, an insurance broker specialising in blocks of flats, wrote to the Respondent to indicate that its policy was due for renewal in respect of insurance, and cited a premium of £10,317.80, plus terrorism premium of £547.39, inclusive of IPT. These premiums are quoted on a declared value of £6.695M.

11. The letter also stated "each year we check the premiums and obtain alternative quotations if required. We are pleased to advise your existing insurer remains competitive…"

12. On 29th September 2019, being the insurance renewal date, the Respondent re-insured with Zurich as before. However, the base premium was £7920.84, the terrorism premium £455.65, and the IPT £1005.18, giving a total of £9381.67. These premiums were quoted on a declared value of £6.241M.

13. On 28th October 2019 the Applicant obtained an alternative quotation for insurance in the sum of £4500 including IPT, via Poundgates.

The Hearing

14. The hearing took place without any prior inspection. None was necessary in the Tribunal's view.

15. The Respondent was attended by 3 directors (Peter Mann, Kenny Dobson, Richard Strutt) and William Knowles (a member and former director), with Mr Strutt taking the lead role.

16. The Applicant was in person, accompanied by his wife, Penelope Wayne.

17. It was clear at the outset that the parties had not complied with the Tribunal's directions dated 16th September 2019, so time was spent clarifying the relevant service charge provisions of the Lease, and refining the issues between the parties.

18. The Respondent handed to the Tribunal a copy of the insurance schedule for 2019, and invoice showing payment, which were duly considered. They confirmed that a premium had been paid of £9381.67 for 29th September 2019 to 28th September 2020.

19. It was further clarified that the Respondent contended that the insurance was not placed on a block policy basis, and that no commission or remuneration or other benefit was paid to the Respondent.

20. The Tribunal was told that the percentage payable for each flat was a matter of some complexity, so the Tribunal was only being asked to determine the total relevant cost for insurance for each year in dispute, and not the Applicant's individual charges.

21. The Applicant was then asked to indicate which of the matters on each insurance schedule (2018 and 2019) he contested.

The Lease

22. It was agreed that the following provisions of the Lease merited attention (each of the leases being in virtually identical terms):

(1) Part of Clause 4 on page 3:

> "PROVIDED that the lessee covenants as hereinbefore in this clause appearing on terms that each owner of a flat in the Building will contribute to the cost of providing carrying out and effecting such services repairs and insurances as aforesaid the contribution appropriate to each such owner being as follows:
> ...
> (b) As to the contribution payable in respect of insurance a yearly sum or sums paid by the Lessors by way of premium or premiums such sum or sums to be paid once a year on demand"

(2) Second Schedule:

(a) Paragraph (4):

> "That the Lessors shall keep the demised premises and the Lessors' fixtures and fittings in the same insured for at least Three thousand pounds against loss or damage by fire to the full cost of rebuilding or replacing the same together with proper professional fees and two years loss of rent (and will produce the receipt for the last payment of renewal premium upon such policy on demand) and the Lessors may insure against any other risks in connection with the Building (including the demised premises) the said private roads footpaths and gardens at their discretion in such amount as the Lessors shall think reasonable…"

(b) Paragraph (7):

> "That the Lessors shall provide such other services and amenities in and for the demised premises as the Lessors shall consider appropriate having regard to the character of the Building as a whole the adjoining buildings or the purpose for which the same may be used."

Relevant law

23. The relevant statutory provisions are set out in Appendix 1 to this decision.

Discussion

24. The salient points arising from the parties' representations were as follows:

<u>2018</u>

25. The Applicant had asked the advice of a broker, Poundgates, who thought the Respondent's premiums were very high, but the Applicant had not asked him to test the market.

26. The Applicant relied on what he considered a comparable insurance quote with NIG Insurance for one of his buildings, Hale Close, a block of 38 flats in Ipswich, which had attracted a premium of £2188.32 (including IPT) against a building value of £4,390,666.

27. The Applicant queried why the declared value for Henley Court was £6.5M, when David Knights had revalued it only a month later at £5.05M. When the Tribunal asked why his quote (from Arista Insurance) was in the

sum of £5.757M, the Applicant was unable to give clarification. He said that he had asked his broker for a like-for-like quote. Mr Strutt explained that the Respondent had approached David Brown at an earlier point in time, but Mr Knights was on holiday and needed to come back to undertake the revaluation. When the RTM met before the revaluation, it was decided as a matter of prudence and caution to raise the declared value to £6.5M. In any event, Mr Strutt pointed out that when VAT was added, David Brown's sum came to £6.06M. Mr Strutt explained that the Respondent had raised the difference between £6.5M and £6.06M with Ferndale Insurance Services Ltd, and had been told that it would have made little difference to the premium; moreover, it would not have been able to obtain a refund of any additional premium paid. The Applicant in reply said he had never heard of VAT being added to a building valuation, and he did not accept the delay in obtaining the valuation.

28. The Applicant then queried what items they were of landlord's contents which needed insuring in the sum of £100,000. The Tribunal noted that his quote (from Arista) was in the same sum. The Respondent was unable to explain why sums were insured to such a level. Mr Strutt explained that the Respondent had taken over the policy of insurance from the previous freeholder, Danesdale, which had already insured with Zurich. Mr Strutt further explained that it was difficult to get a sensible valuation from other insurers at the time, because of an issue concerning subsidence at the building. He and Mr Dobson explained that there were some plumbing tools and drain rods in the building, and bits and pieces of guttering, but nothing valuable.

29. Mr Dobson added that the brokers do have the Respondent's best interests at heart, and that they do obtain alternative quotes. He referred to a letter from them in 2018 which contained the same wording as the letter mentioned in paragraph 11 above. He conceded that it would have helped if such alternatives had been provided in writing.

30. The Applicant queried the book debts of £50,000. The Respondent took this to mean if there were difficult lessees who had to be taken to court, this item covered it. Mr Strutt explained that, with the exception of 2 lessees, all leaseholders paid their service charges on time. He emphasised that the directors do not charge for their services. Mr Dobson confirmed there were no kickbacks or benefits to the directors from the placing of insurance.

31. The Applicant then submitted that insuring up to 30% of the buildings sum insured for any alternative accommodation/ rent receivable seemed excessive, based on his discussion with his broker. The Respondent

contended that if there were to be a tragedy, it would not take a short while for a building such as this to be reinstated, and the lessees would need to be put up or have loss of rental paid. Mr Strutt suggested 20% would not be enough, citing the fact that some Grenfell occupants were still in hotels. The Applicant disputed that the Grenfell tragedy was a useful comparison, and stated that, given his 2 bedroom flat is rented out for £650pcm (£7800 p.a.), with 42 flats at a similar rent, the annual cost would be £330,000 to £340,000, so 3 years would only cost about £1M, 6 years £2M, and so on.

32. The Applicant then submitted that Property Owner's liability of £10M seemed high, and that £2 to 5M would be more appropriate. The Respondent contended that £5M would not be enough to cover the value of the building alone.

33. The Applicant stated that in relation to his properties, he does not insure for terrorism. He considered it a personal matter, and when the Tribunal observed that the RICS code recommends cover for terrorism, and that the Lease terms enable the Lessor to insure other matters at its discretion, the Applicant did not pursue a position that insurance for terrorism was unreasonable. The Respondent expressed its concern that given the location of the building (on the corner of a very busy street near traffic lights) if a lorry driver were to drive into the building, it might be considered an act of terrorism. Further, there were often helicopters flying in the vicinity. The Tribunal noted that Zurich's Insurance Schedule detail all the risks covered, which apart from the usual, include "explosion".

34. The Applicant next pointed out that his broker had considered that subsidence had which occurred over 10 years previously would not affect a premium. It was established by the Tribunal that in the instant case the subsidence to the building took place in about 2008. The Respondent contended subsidence was always a material consideration which had to be notified to the insurer, albeit Mr Strutt could not say whether or not it did have an effect on the amount of the premium in this case. In reply, the Applicant said it had been difficult to put any details of the previous claim to his broker because they had not been forthcoming from the Respondent. The Applicant replied that his quote included subsidence because the excess for the same is stated as £1000.

<u>2019</u>

35. The parties adopted their submissions for 2018, with the following additional points:

36. The premium was confirmed as having been paid by an invoice dated 23rd September 2019 in the sum of £9381.67. This was broken down as £7920.84 standard premium plus £455.65 terrorism premium, plus IPT. The Insurance Schedule showed identical heads to the 2018 Schedule.

37. This evidence contrasted with the quote of £4500 for the Applicant, obtained by email from Poundgates, via an insurer called Arch. It was stated to include subsidence cover. The Tribunal was told it was a like-for-like quote, but the Applicant conceded that only 20% was stated for loss of rent/alternative accommodation, that the Property Owner's liability was again £5M not £10M, and that the declared value was £5.75M.

38. The Respondent explained that the declared value of £6.241M on its Schedule was an indexation increase from the previous year, and that it included VAT.

39. The Respondent also pointed to the reduction in the premium for 2019/2020.

Determination

40. Having weighed all the above submissions, the Tribunal reminds itself of the decision of the Upper Tribunal in *Cos Services Ltd v Nicholson* [2017] UKUT 0382 (LC), which held that every decision will be based on its own facts, but it will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is always the lowest that can be obtained in the market; that the Tribunal must be satisfied that the charge in question was reasonably incurred, and in doing so must consider the terms of the lease, and the potential liabilities to be insured against; that the Tribunal should require the landlord to explain the process by which the particular policy and premium have been selected, with some reference to the current market.

41. The Upper Tribunal further held that tenants must ensure that their comparable quotes are genuinely like-for-like, in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants in the lease.

42. The Tribunal is therefore mindful that a tenant's quote does not have to be identical to the landlord's, but it must be sufficiently similar.

43. It was not in dispute that the insurance cover in this case was reasonably incurred, and might cover terrorism at the Respondent's discretion. The Tribunal is assisted in this regard by the decision of the Upper Tribunal in *Qdime Ltd v Bath Building (Swindon) Management Co. Ltd and others*

[2014] UKUT 02161 (LC) in which the lessor was permitted to recover for terrorism premiums in a lease because (a) the word "explosion" was held to include explosion by terrorist act, and (b) the lessor could place cover on "such other risks as the Landlord may in its reasonable discretion think fit to insure against…"

44. In the Tribunal's decision, the Applicant's quotations were not sufficiently similar to the Respondent's to persuade the Tribunal that the Respondent's premiums were in general terms excessively high, for the following reasons:

(1) The Respondent has adequately explained the process by which the particular policy and premium have been selected, with some reference to the current market. The Applicant's broker had not tested the market, whereas the Respondent's broker stated it had;

(2) The Arista and Arch quotes did not have a comparable declared value to Zurich's, the Tribunal accepting:

(a) It is not unusual for a reinstatement value to include VAT;

(b) The Respondent's evidence that any small difference in premium would not be recoverable once cover had been placed.

(3) The Arista quote and Arch quotes only covered £5M for Property Owner's liability, and the Tribunal considers that the Respondents had not acted unreasonably in obtaining cover for £10M;

(4) The Arista quote (on p.6 thereof) specifically answered "no" to the question, "Has the property or adjacent property suffered from, or do they show any visible signs of damage from subsidence, landslip or ground heave?" The Tribunal, applying its experience and expertise, prefers the Respondent's submission that a matter of subsidence (even if 12 years old) will still need to be declared, and will have materiality;

(5) The Tribunal could not place any real evidential value on the Applicant's insurance of Hale Close on the limited information contained on the papers, which building had a much lower declared value in any event;

(6) Whilst the book debts of £50,000, contents value of £100,000 and figure of 30% for "alternative accommodation"/"rent receivable" seemed to the Tribunal to be on the high side, there was no evidence of a difference to the premiums payable had these been lower.

45. Notwithstanding the above, the Tribunal does consider that the figure for 2018/2019 should be capped at the same figure for 2019/2020, i.e. £9381.67 instead of £10,548.72, for the following reasons:

46. The Tribunal places particular weight on an email from Ferndale Insurance Services Ltd dated 25th September 2018 which indicated that it would reduce the premium total to £9217.19 against an insured value of £5,981,564. Given that only a month later David Brown gave a revaluation at a very near figure of £6.06M, and given that the delay was all the Respondent's in getting Mr Knight's revaluation, the Tribunal considers that a reduction to the sum of £9381.67 would be appropriate in this case.

47. The Tribunal therefore determines that:

    (1) The relevant cost for insurance for 2018/2019 is capped at £9381.67;

    (2) The relevant cost for insurance for 2019/2020 is allowed in the sum of £9381.67.

48. The Tribunal as a matter of comment encourages the Respondent in the future to be ready to evidence the actual comparable quotes obtained by its broker.

s.20C/ Sch. 11, para. 5A application

49. No order is made on the Applicant's application for an order under s.20C/ para. 5A, on the express concession by the Respondent that it will not seek to add any costs of these proceedings to the service charges.

Application for application fee and hearing fee

50. No order is made on the Applicant's application for his costs of the application and for the hearing fee to be paid by the Respondent. The Tribunal declines to exercise its discretion in his favour, and considers that this matter could and should have been resolved before the application was filed, bearing in mind that the Respondent has not acted in bad faith, relying on its broker's advice for all material purposes.

51. Moreover, whilst the Tribunal have made a small reduction for the 2018/2019 figure, it has allowed the Respondent's 2019/2020 figure in full, the Applicant's main argument that both premiums were excessive has not been upheld.

Judge:  Date: 25/2/20

S J Evans

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 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 to 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.

Appendix 1

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Schedule 11 para 5A of the Commonhold and Leasehold Reform Act 2002

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph-
(a) "litigation costs" means costs incurred or to be incurred by the landlord in connection with proceedings of a kind mentioned in the table [First-tier Tribunal proceedings].