



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/22UD/LSC/2022/0034**

HMCTS : **Paper**

Properties : **4, 5, 7, 9, 11, 27 Consort Close, Warley, Brentwood
CM14 5XE
23, 25, 27, 35, 37, 58, 60, 62, 64, 66, 68, 70 and 74
Brackens Drive, Warley, Brentwood CM14 5UF
and 5UE
5, 9, 11, 13, 21, 23, 26, 28, 48, 52, 54 and 62
Wellington Place, Warley, Brentwood CM14 5XD
13, 15, 17, 19 and 27 Queen Street
Warley, Brentwood CM14 5JZ**

Applicants : **The Leaseholders of the Properties**
Representative : **Jayne Knight**

Respondent (Landlord): **Long Term Reversions Harrogate Limited**
Representative : **JB Leitch Solicitors – Mr Peter Humphries**

Type of Application : **1) to determine the reasonableness and
payability of Service Charges (section
27A Landlord and Tenant Act 1985)
2) for an order that the landlord’s costs
arising from the of proceedings should be
limited in relation to the service charge
(Section 20C of the Landlord and Tenant
Act 1985)**

Tribunal : **Mr Peter Roberts FRICS CEnv
Judge JR Morris**

Date of Application : **6th June 2022**
Date of Directions : **4th July 2022**
Date of Decision : **28 October 2022**

DECISION

Decision

1. The Tribunal determines that the reasonable and payable Building Insurance Premium in the Service Charge for the years in issue relating to the Properties is as follows:

Year ending 31st July 2020

Consort Close	£328.64
Brakens Drive	£340.00
Wellington Place	£352.50
Queens Street	£387.45

Year ending 31st July 2021

Consort Close	£347.52
Brakens Drive	£349.88
Wellington Place	£362.47
Queens Street	£404.45

Year ending 31st July 2022

Consort Close	£379.15
Brakens Drive	£378.22
Wellington Place	£391.85
Queens Street	£445.46

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

Reasons

Application

3. On 6th June 2022, the Applicants made an application under section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness and payability of the Buildings Insurance item of the Service Charge for the years 1st July 2019 to 30th June 2020, 1st July 2020 to 30th June 2021, 31st July 2021 and 30th June 2022 for the Properties which are situated at Consort Close, Brakens Drive, Wellington Place and Queens Street.
4. In addition, the Applicants applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
5. Directions were issued on 4th July 2022.

Description of the Properties

6. The Tribunal did not inspect the Properties but from the Statements of Case, Lease, the Land Registry and the Internet found them to be located in a large residential area known as the Brackenwood Estate which has a range of housing. The particular part of the Estate which is the subject of these proceedings comprises a development of 88 units (the Development). The Properties are referred to in the Lease and Land Registry Title as flats although they might be described as maisonettes in that most have their own entrance door, garden and garage and those that do not have a garage have a parking space.
7. The Properties are in a number of two storey buildings (the Buildings) of 4, 6 and 8 ground floor and first floor flats. Each Building has brick elevations under a tile roof and were probably constructed in the 1980s.
8. The Properties are insured by the Respondent by road i.e.
 - Consort Close
 - Brakens Drive
 - Wellington Place
 - Queens Street.

The Lease

9. A copy of a Lease was provided which is for 9 Consort Close and all the Leases are understood to be in similar terms. The particular Lease provided is dated 26th July 1985 and is for a term of 199 years from 1st January 1984. The Lease is made between (1) Thomas Bates and Son Limited (the Lessor or Landlord) and (2) James Ernest Hawkins and Kim Elizabeth Hawkins (the Lessees or Tenants). The leasehold interest for the flat had subsequently been assigned to the Applicant's Representative and a copy of the title at HM Land Registry was included.
10. The relevant clauses of the Lease concerning the Insurance are:
 - Clause 3(3) and Paragraph (2) of the Third Schedule by which the Tenant is required to pay a proportionate part of the insurance premium paid by the Landlord; and
 - Clause 4(4) which requires the Landlord to:

“...keep insured the Building and/or other premises of which the demised premises form part against loss or damage by fire aircraft explosion storm tempest (so far as insurable) act of war or accident or by any other peril within the usual comprehensive policy of a reputable insurance office at the full reinstatement vale thereof...”
11. A copy of the Freehold Title held by the Respondent in respect of the Properties was provided showing that the reversion to the Leasehold interest in the Property was

assigned on 29th September 1998 to the Respondent who is the registered proprietor at HM Land Registry under Title Number EX291676.

12. The Freehold Title contained a Schedule of Notices of Leases which included the Properties.

The Law

13. The Law relating to these proceedings is set out in Annex 2 and should be read in conjunction with this Decision and Reasons.

Administration Charges

14. The Respondent stated that:

“with regards to the £19.99 “Insurance Administration Fee” referred to by the Applicants’ Representative as appearing on certain Leaseholder accounts (including her own), in order to narrow the issues between the parties and given the limited amounts involved in this regard (without prejudice to the Respondent’s position regarding recoverability), the Respondent is willing to (and will) waive its entitlement to claim those. That is therefore no longer in issue and does not require further review/determination.”

The Evidence and Submissions

Applicants’ Case

15. The Applicants’ Representative said that each year the Buildings Insurance has increased to a point where they feel it has become unreasonable for the size and use of the properties. Annual increases to the insurance policy do not increase by the same percentage across the whole estate, especially when no claims have been made.
16. It was submitted that there had been a reduction in insurance premiums across the market but that this had not been passed on to the Leaseholders e.g., the 2020 quotation obtained from one company was 20.95% lower than that obtained by the Respondent from the same company in 2019.
17. The Applicants provided insurance quotations which they had obtained and which they submitted were like for like with the Building Insurance policies obtained by the Respondent. The Applicants’ representative said that the insurance quotes obtained were for the whole estate, so individual parts of the estate were not penalised if they had more claims than another. The Buildings in Queens Street have been very unfortunate with the number of claims, and it was submitted that their insurance premiums are now excessive. If this was spread across the whole estate, it would not be such a large increase.
18. It was submitted that the Building Insurance premiums are excessive compared to the general market of £225.00 based on London prices which are the most expensive in the country. The increases to the insurance premiums vary dramatically across the Development, and never go down as per the market prices, reference was made to a Which report dated May 2022 that was said to show that insurance reduced by 7%.

The Applicants' Representative stated that her own contents insurance had reduced in 2022 by 11%.

19. The Applicants posed a number of queries which can be paraphrased as follows:
- (i) How many quotes are obtained by the broker.
 - (ii) The breakdown of these quotes and an explanation of the decision making when the highest quote was chosen.
 - (iii) Confirmation of how much commission is earned from the portfolio.
 - (iv) Why the group do not have 2 insurances, one for their commercial portfolio and one for their residential portfolio, which should reduce the cost of the residential portfolio.
20. The Applicants requested a commitment that future year's premiums should be based on the revised 'fairer' premium which has effectively been determined by the courts.
21. The Applicants adduced evidence in the form of Insurance quotes for the years 2019, 2020 and 2021. The quotations are for the whole Development of 88 units which then must be divided by 88 to give the unit charge.

Year	Broker	Total Premium	Unit Premium
2019	Towergate	£26,730.12	£303.75
	Lansdowne	£8,590.81	£97.62
2020	Towergate	£21,130.85	£240.12
	Aviva	£18,435.37	£209.49
2021	Towergate	£23,588.98	£268.05
	Marsh	£16,41.60	£186.83
	Lansdowne	£7,724.73	£87.78

22. The Applicants provided the following spreadsheet setting out the per unit cost of Buildings Insurance by road as charged by the Respondent showing the amount of the increase year on year charged and the highest per unit quotation that they had obtained in comparison to that obtained by the Respondent.

Year ending 30th June	2020	2021	2022	2023
Consort Close				
Cost	£328.64	£347.52	£379.15	£432.27
Percentage increase on previous year	10.51%	5.58%	7.75%	14.01%
Highest quote obtained by Applicants	£303.75	£240.12	£268.87	
Brackens Drive				
Cost	£340.00	£349.88	£378.22	£419.25
Percentage increase on previous year	3.60%	2.86%	7.75%	10.85%
Highest quote obtained by Applicants	£303.75	£240.12	£268.87	

Wellington Place				
Cost	£352.50	£362.47	£391.85	£434.46
Percentage increase on previous year	5.10%	2.79%	7.79%	10.87%
Highest quote obtained by Applicants	£303.75	£240.12	£268.87	
Queen Street				
Cost	£387.45	£404.45	£445.46	£508.47
Percentage increase on previous year	10.09%	4.29%	9.65%	14.5%
Highest quote obtained by Applicants	£303.75	£240.12	£268.87	

23. No analysis comparing the cover between the policy obtained by Lockton's and those for which the Applicants obtained quotations was provided. The full policy wording was not provided for any of the insurances for which quotations were obtained.
24. In addition, the Applicants did not provide evidence as to the full extent of information provided to inform each quote to demonstrate whether they were each quoting on the same basis as Lockton. It is not therefore possible to determine the extent to which the quotes were provided on exactly the same assumptions and bases.

Respondent's Case

25. The Respondent's Representative provided a Statement of Case. It was stated that the Development of 88 units is insured by individual blocks, which are split between the owners. Consort Close is equally split between the 18 units. Brackens Drive, Queen Street and Wellington Place are set up and charged in the same way. The Development was said to be self-managed in that the Respondent is not involved with a service charge except the insurance. It was noted from the supporting documents that Pier Management Limited are the Applicant's asset manager (the Asset Manager) and demand and collect the ground rent and insurance contributions under the Lease.
26. It was said that there is no dispute between the parties that building insurance is chargeable to the Leaseholders under the terms of their respective Leases and a copy of an example demand was provided together with a summary of rights and obligations under section 21B of the Landlord and Tenant Act 1985. Only the reasonableness of the amount charged for insurance for 2019, 2020 and 2021 is in dispute.
27. The Respondent submitted that the disputed insurance costs are reasonable in amount and thus payable.

Respondent's Placing of Insurance

28. The Respondent referred to what the cases have identified as two elements of placing insurance which are (i) the decision-making process and (ii) the outcome.
29. The Respondent described its decision-making process by referring to cases in support of its actions. It was said that the insurance is placed by the Respondent on a portfolio basis, not by individual property as it is entitled to do under *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington)*

Limited (1996) EWHC Admin 50. It is not obliged to obtain the cheapest provided it is obtained at “arms’ length” in the normal course of business as required in *Havenridge Limited v. Boston Dyers Limited* [1994] 49 EG 111. However, each property is underwritten on an individual basis; the claims on one property do not impact another and the rating or risk profile of each property is individually assessed by the underwriters, as it would be in the normal course of business. The relevant insurance certificates are comprehensive and individual to each property and the individual premiums are recorded within the insurance certificates (copies were provided). Therefore, the Queens Road premiums are higher due to the claims history relative to Consort Close.

30. The Respondent said it is not specialised in insurance and so relies upon an FCA regulated broker, Locktons, (the Broker) to negotiate terms and arrange insurance undertaking market testing on behalf of the Respondent as required in the case of *Forcelux V Sweetman and Another*, (2001) 2 EGLR 173. It was submitted that if the premium is obtained in the normal course of business following market testing and so is representative of the market rate, or that the contract was negotiated at arm’s length and in the market-place then the cost was reasonably incurred as confirmed in *Avon Estates Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC) [30].
31. The Respondent is not obliged to renew insurance with either Broker or insurer and can individually place a policy (rather than on a portfolio basis) should that be desirable. It was said that it is not commercially viable, nor reasonable, to expect a commercial landlord to obtain insurance for each Building or Development separately, with different insurers, in order to benefit from the cheapest insurance available and that approach does not necessarily guarantee the cheapest available. In addition, block policies issued on such a large corporate scale allow a landlord to obtain favourable terms and benefits included in the policy that would not normally be available to a private landlord and are advantageous to a leaseholder in the event of a claim.

Market Testing

32. The Respondent is obligated to provide insurance that is reasonably incurred and reasonable in amount; there is no obligation it must be the cheapest available — that itself is not an indication of unreasonableness. Market testing and a market review have been undertaken (further referred to and evidenced herein below).
33. The Respondent summarised the Broker’s market overview for the period 1st July 2021 to 20th June 2022 as follows:
 - (i) The marketing is hardening (and continues to do so).
 - (ii) There is an increase in the cost of materials and labour (being described as a dramatic increase). The Respondent would highlight that is only worsening given the rising cost of living and substantial increases in inflation and interest rates.

- (iii) The effects of the Pandemic are explained as are how residential properties are seen as higher risk for insurance purposes (so insuring each site will not necessarily result in lower costs for leaseholders).
- (iv) Increases of at least 10% or greater per year (and that is on well-performing properties) are being seen in the market;
- (v) It always negotiates with a view to securing the best deal for leaseholders, whilst also ensuring a broad level of cover as required; and
- (vi) Increases are even being seen where properties have a good claims record.

34. With regard to market testing, the Broker said in a letter dated 26th July 2022:

- (i) In 2018 10 insurers were approached and the most competitive (AXA) retained.
- (ii) For 2019-2020 5 markets were approached and AXA remained the most competitive.
- (iii) For 2020 and 2021, with positive terms offered for renewal. further testing was not required as described.
- (iv) For 2022 5 markets were again approached and AXA remained the most competitive.

35. In response to the Applicant's reference to the Which and AIB Reports and the question of why the Respondent does not insure commercial and residential properties separately, the Broker replied in a letter dated 30th August 2022 summarised as follows:

The Household and Homeowner Building Insurance and Property Owner's markets are two separate and distinct insurance markets and therefore it is difficult to make a comparison between a house insurance policy and the Property Owners market as they are different products.

The Household and Homeowner Building Insurance market referred to in the reports is much larger in terms of insurers and the increased competition helps to keep premium rates much lower. The advent of market comparison websites has also helped to significantly reduce costs. This is not the case in the Property Owners market which still requires a significant amount of human interaction in underwriting and analysing. The Property Owners policies also provide a wide range of covers for the benefit of the landlord which are in addition to the Household and Homeowner Building Insurance covers which are typically come across, e.g., escape of water and fire. The policy arranged for the Respondent is in keeping with the standard requirements and allowances of leasehold insurance agreements.

In addition, excess levels in the Household and Homeowner Building Insurance market have risen dramatically over the past 3 to 4 years with excesses of nil or £250.00 being replaced by voluntary excesses of £500.00 which places more risk on

the policyholder and helps to reduce the number of low value claims helping to reduce the premiums. This is not the case with the Property Owners policies.

However, under FCA regulation from 1st January 2022 renewals must be at the same level for existing customers as are offered to new customers preventing introductory discounts. As a result, Household and Homeowner Building Insurance have begun to rise.

36. A table of the Claims History was provided by the Broker:

Property	Peril	Loss Date	Claim
3 Consort Close	Storm	05/11/2013	£244.00
8 Consort Close	Storm	17/11/2015	£75.00
9 Consort Close	Escape of Water	20/02/2016	£75.00
31 Consort Close	Storm	15/02/2022	£1,137.00
33 Consort Close	Storm	18/02/2022	£1,585.00
29 Consort Close	Accidental Damage	22/02/2022	£605.00
9 & 11 Wellington Place	Escape of Water	23/07/2013	Nil
54 Wellington Place	Escape of Water	01/04/2017	£2,575.00
13 & 15 Wellington Place	Escape of Water	12/10/2021	£1,922.00
31 Brackens Drive	Escape of Water	28/06/2015	Nil
35 Mount Crescent	Theft	30/03/2015	£750.00
15 Queen Street	Theft	16/11/2015	£1,113.00
15 Queen Street	Accidental Damage	25/08/2016	£1,167.00
7 Queen Street	Escape of Water	11/05/2018	£7,816.00
15 Queen Street	Escape of Water	04/03/2019	£1,765.37
41 Queen Street	Escape of Water	18/01/2021	£75.00
15 Queen Street	Escape of Water	20/05/2021	£75.00
7-21 Queen Street	Accidental Damage	02/07/2022	£3,500 Reserve

37. The insurance is index linked and therefore the premium will usually increase by a small percentage on each renewal. In addition, there are normal increases in price if there are claims experienced at a property/development.
38. The Certificates of Insurance were provided which showed the Building Sums Insured, the premiums and the excesses as set out in the table below:

Year ending 30th June	2020	2021	2022
Consort Close	£	£	
Building Sum Insured	3,725,946	3,9125,972	4,115,700
Premium for 18 flats	5,915.52	6,255.36	6,824.70
Per unit	367.24	£347.52	£379.15
Brackens Drive			
Building Sum Insured	4,553,978	4,786,232	5,030,322
Premium for 22 flats	7,487.48	7,697.36	8,320.84
Per unit	£340.00	£349.88	£378.22
Wellington Place			
Building Sum Insured	6,623.968	6,961,792	7,316,832

Premium for 32 flats	11,280.00	11,599.04	12,539.00
Per unit	352.50	362.47	391.85
Queen Street			
Building Sum Insured	3,311,984	3,480,896	3,658,416
Premium for 16 flats	6,199.20	6,471.20	7,127.36
Per unit	£387.45	£404.45	£445.46
Excesses			
Fire, Lightning, Aircraft, Explosion & Earthquake	Nil	400	400
Riot, Civil Commotion, Malicious Damage, Storm, Flood, Theft & All Other Damage	350	400	400
Subsidence	1,000	1,000	1,000
Escape of Water	500	500	500
Escape of Water at Queen Street	750	750	750

Commission

39. The Respondent said it does not derive commission from the Property in isolation. The Respondent's group of companies own a large portfolio and it has the ability to "bulk buy" enabling them to earn commission on the portfolio as a whole in return for work done.
40. The said group (of which the Respondent forms a part) does benefit from the said portfolio commission. In return for commission, the group undertakes work to ease the administrative burden on both the broker and insurer. This includes the instruction to agents and external surveyors to arrange reinstatement valuations, supplying details of such valuations and reports for renewals, advising insurers of health & safety risks (giving rise to potential personal injury claims), alterations (demised and un-demised) and breaches of covenant that may impact on the risk accepted by the insurer, issuing of demands to tenants, copying and providing information to tenants, lenders, asset managers and administrators dealing with tenants assets including (but not limited to) Certificates and Policy Wordings, keeping accurate records for the portfolio on claims experience and advising the groups' finance companies accordingly.
41. It was conceded that if one of the Properties, or one of the Buildings within the Development, was presented to a broker or insurer in isolation, it may be that no commission may be payable (though that is not guaranteed).
42. The actual commission is 4.75%, confirmed by correspondence with the Broker (copies provided). It was noted that the CMA investigation into insurances deemed commissions of 20% to be reasonable so the Respondent's commission is very reasonable and is not paid by leaseholders or payable to them.

Summary of Respondent's Case

43. In summary the Respondent said:
 - (i) insurance is obtained at arm's length,

- (ii) market testing is regularly undertaken by an FCA regulated broker with a view to ensuring reasonableness,
- (iii) portfolio basis insurance is commercially sensible resulting in increased flexibility and preferential terms whereas individual buildings/developments insurance would not be commercially viable (aside from the fact that it is not required by the Lease or otherwise),
- (iv) insurance costs are increasing each year (confirmed by the broker) contrary to the Applicant's belief, with the market hardening – a rough guide is at least 10% per year even in respect of well performing properties but can often be higher,
- (v) the insurance is in line with the market norm and the requisite decision-making process was undertaken,
- (vi) a commission is justified in the above circumstances and is certainly not an indicator of unreasonableness. nor is the fact that it is conceivable/possible for leaseholders to secure cheaper insurance. The question is only whether the insurance costs were "reasonably incurred" and in all of the circumstances above, the Respondent avers that they were so incurred. It may be that the confusion and expectations with the Applicant's position that appears evident is with regards to contents insurance; contents insurance costs for home owners do generally reduce year- on-year as the value of goods depreciates over time. However, contents insurance is not something to which these proceedings and the relevant insurance relates.

44. With regard to the outcome the Respondent referred to three First-tier Tribunal decisions. Case reference CAM/00KF/LSC/2012/0074 concerned another property. That Tribunal found from the evidence that premiums had risen greater than the rate of inflation due to substantial claims as a result of flood damage since 2008 and concluded that they had risen by about 10% per annum for the years 2009, 2010 2011 and 2012. Case reference CAM/00KF/LSCI2021/0062 concerned the same property as case reference CAM/00KF/LSC/2012/0074 and the applicant in that case is the Respondent in the present case. The applicant in that case set out its decision-making process and outcome in a similar manner to the present case, identifying in particular that the premiums for the years 2018, 2019, 2020 and 2021 had risen in the region of 10% or less. The respondent in that case provided very little evidence and the Tribunal determined in the absence of contrary evidence that the premiums were reasonable.

45. The Respondent also referred to Case reference CAM/00KF/LSC/2017/0085. This related to just Consort Close for which the Respondent set out the following by way of representative example:

Premium Year	Premium Charged	Premium Increase
2016	£288.00	
2017	£318.41	£30.41
2018	£317.41	(negative £1.17)
2019	£328.64	311.20
202	£347.52	£18.88
2021	£379.15	£31.63
2022	£432.27	£53.12

46. The Respondent said that 2018 was ruled by the FTT (the £50 reductions). Thereafter it will be noted that each increase was less than 10% each year with the sole exception of 2022 when there were two insurance claims pertaining to Consort Close, one of which remains open. In any event the increase is less than 13% which is submitted to be entirely reasonable in the current economic climate of rising costs and inflation.
47. The Respondent submitted that the “decision-making process” has been complied with and a more than reasonable outcome achieved.

Response to Applicant’s Case

48. The Respondent took the view that the Applicants’ case amounted to listing the increases over the years in issue and submitting that they should have reduced in each case. This is a misunderstanding on the part of the Applicants.
49. The Respondent said that the Applicants rely upon case reference CAM/22UD/LSC/2017/0060 (copy provided) which in 2017 awarded a modest discount to their Representative, Ms Knight, in respect of her particular flat Property as follows:
 - (i) 2016 – £338 building insurance reduced by £50 to £288; and
 - (ii) 2017 ~ £368.41 building insurance reduced by £50 to £318.41.
50. These reductions were applied and a copy of Ms Knight’s Statement of Account to July 2022 was provided.
51. The Respondent said case reference CAM/22UD/LSC/2017/0060 was specific to 2016 and 2017 and did not set any cap on the insurance “going forwards”. Insurance must necessarily be variable by its nature for example to take account of the rising costs of servicing and materials, along with inflation increases. Also, the determination for 2016 and 2017 is not evidence of any entitlement to such a reduction in future years given the changes in economic climate, the effects of the Covid-19 Pandemic in late 2019/early 2020 and the rising cost of living thereafter.
52. The Respondent said that the Applicant also sought “a commitment that future year’s premiums should be based on the revised ‘fairer’ premium which has effectively been determined”. Such a commitment was said to be beyond the scope of Section 27A and cannot be provided/ordered. The imposition of a cap would have risked a situation where the Development could not be insured because the freeholder is prohibited from being able to recover the insurance premium.
53. It was said that there is no profit in insuring the Properties. The premium is dictated by the market conditions each year, along with the claims’ history in respect of each Block or Development, as appropriate.
54. Regarding the quotations referred to by the Applicants it was submitted that they were not for comparable cover. They are not all for the years in issue. The insurance market changes each year and has done so considerably in the last 3 to 4 years and it

is highly likely insurance terms would have also changed in line with the changing conditions.

55. The spreadsheet used for comparison does not provide the required information and some of the documentation does not have a policy wording or schedules or confirmatory addresses e.g., Towergate 2021. The extent of the risk is not always the same e.g., Lansdown does not cover terrorism and Marsh shows clear differences (increases) in terms of costs for excesses, such as escape of water, alternative accommodation, trace and access, tree felling and fly tipping. It is also not clear that the claims history was notified to the quoting companies which would lead to lower quotations being given.
56. Notwithstanding the lack of comparability, the fact that insurance could possibly have been obtained for a lower price does not mean that the insurance cost incurred is unreasonable. It was submitted that, in fact, contrary to what the Applicants suppose, insurance costs are increasing.

Decision

57. Whilst the Respondent has clearly undertaken market testing, it is not clear from the information provided as to what the various quotes provided were and the basis upon which the chosen insurer was considered to be the most competitive. In this regard, the letter dated 26 July 2022 is limited in its assistance as there is no explanation in this regard.
58. However whilst the detail may be lacking, it is evident that the Respondent has fully complied with the requirement to carry out market testing and there is no obvious benefit or motivation for them to accept a quote that was not competitive in the market to the extent that the Tribunal should have concerns in this regard.
59. The Applicant has obtained various quotes, but the Tribunal has not been provided with evidence as to what instructions and information was provided in each case by the Applicants, hence are unable to ascertain the extent to which they had regard to the same information as that provided by the Respondents in obtaining their quotes.
60. There is therefore no means by which the Tribunal is able to directly compare “like with like”. In this regard, this matter can be distinguished from the Tribunal decision in the Wooton case (CAM/34UF/LSC/2018/0023) as provided to this Tribunal where Mr Peachy submitted detailed analysis including full details of the basis upon which the comparative quotes had been provided.
61. The Tribunal therefore considers that there it has not been provided with sufficient evidence to suggest that the approach taken by the Respondent in this regard and, consequentially, the premiums being charged are unreasonable.
62. The Applicant has requested that the insurance premiums should relate to the entire estate i.e., over the 88 flats such that they are shared in equal amounts by the

residents. This would result in residents living in blocks that have traditionally lower claims levels subsidising the premiums of other residents.

63. The Tribunal does not consider this to be a fair or equitable approach and is satisfied that the Respondent's approach, whereby the individual blocks are assessed separately by reference to their individual claims' records, is entirely appropriate.
64. It is not open to this Tribunal to require the Respondent to make any commitments in respect of future premiums. In this regard, such matters can only be assessed by reference to matters as they actually exist at that point in time.

Section 20C Application

65. The Respondent applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs arising from the proceedings should be limited in relation to the service charge.

Decision re Section 20C & Paragraph 5A of Schedule 11

66. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a Tribunal or court through the service charge. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under the contractual provisions of the lease.
67. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a Tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
68. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. The benefit of the order only applies to the tenants who are a party to the application. Those tenants who are not are still liable for their proportionate amount of the costs.
69. Firstly, the Tribunal considered whether the Lease contains a provision enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge. The Tribunal examined the Lease and could not find any such provision.
70. Secondly, notwithstanding that there did not appear to be a provision enabling the Respondent to claim its costs the Tribunal considered whether, for the avoidance of doubt, an order should be made under section 20C of the Landlord and Tenant Act 1985. In deciding whether or not to do so the Tribunal considered the conduct of the parties and the outcome and nature of the proceedings.

71. In this regard, the Tribunal does not consider that a costs order is warranted.

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 - THE LAW

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

1. Section 18 Meaning of “service charge” and “relevant costs”
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
 - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

2. Section 19 Limitation of service charges: reasonableness
 - (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

3. Section 27A Liability to pay service charges: jurisdiction
 - (1) An application may be made to a leasehold valuation Tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to a leasehold valuation Tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-

- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.