



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

**Case reference** : **LON/00AU/LSC/2019/0310**

**Property** : **Flats at 22 and 24 Hungerford Road, London N7 9LX**

**Applicant** : **David Lewis (Flat 1 at 22);  
Stefan Pop (flat 2 at 22);  
Angelina Foo (Flat 4 at 22);  
Marta Majos (Flat 5 at 22);  
Tom Joyce (Flat 1 at 24);  
Dominique Amans (Flat 2 at 24);  
Claude and Samar Abi-Gerges (Flat 3 at 24);  
Joceline Gabriel (Flat 4 at 24);  
Simon Noyes (Flat 5 at 24);**

**Representative** : **Mr Tom Joyce/Mr David Lewis**

**Respondent** : **Hammend Limited**

**Representative** : **Mr P Stavrou, director**

**Type of application** : **For the determination of the reasonableness of and the liability to pay a service charge and/or administration charges**

**Tribunal members** : **Judge D Brandler  
Hugh Geddes, Professional Member**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **16<sup>th</sup> December 2019**

**Date of decision** : **21<sup>st</sup> December 2019**

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## DECISION

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### **Decisions of the tribunal**

(1) The tribunal determines that the Respondent must refund to the Applicants the sums charged and paid for late payment demand letters; the interest charges incorrectly demanded and paid; and 50% of the insurance premiums demanded and paid in respect of the last 6 years from 2014 to 2019.

(2) The details of payment in relation to each leaseholder Applicant is as follows:

(a) Flat 1, 22 Hungerford Road:

David Lewis.

Interest: The terms of the lease for this property do not permit interest demands for late payments of service charges. The Tribunal reject the Respondent's reliance upon the Late Payment of Commercial Debts (Interest) Act 1998 because the demand of service charges is not for business purposes. The full amount of interest charges must be refunded.

The fee for a late payment demand letter in the sum of £30 must be refunded, as agreed by Mr Stavrou for the Respondent at the hearing.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(b) Flat 2, 22 Hungerford Road:

Stefan Pop

Interest: The terms of the lease for this property permit interest charges for late payments of service charges by clause 4(4) of the lease [270]

Only charges overdue after 25<sup>th</sup> October 2018 are subject to interest. Any other interest charged must be refunded. The Respondent's solicitors holding funds in relation to this must provide a completion statement setting out how any interest charges are calculated.

Fee for late payment demand letter in the sum of £30 must be refunded, as agreed by Mr Stavrou for the Respondent at the hearing.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(c) Flat 4, 22 Hungerford Road

Angelina Foo

Interest: The terms of the lease for this property permit interest charges for late payments of service charges by clause 3(1) of the lease. [326]

Only service charges overdue after 25th October 2018 are subject to interest. Any other interest charged must be refunded. The Respondent's solicitors holding funds in relation to this must provide a completion statement setting out how any interest charges are calculated.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(d) Flat 5, 22 Hungerford Road

Marta Majos

Interest: The terms of the lease for this property permit interest demands for late payments of service charges by clause 4(4) of the lease [367].

Only service charges overdue after 25th October 2018 are subject to interest. Any other interest charged must be refunded. The Respondent's solicitors holding funds in relation to this must provide a completion statement setting out how any interest charges are calculated.

Fee for late payment demand letter in the sum of £30: must be refunded as agreed by Mr Stavrou for the Respondent at the hearing.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(e) Flat 1, 24 Hungerford Road

Tom Joyce

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(f) Flat 2, 24 Hungerford Road

Dominique Amans

Interest: The terms of the lease for this property do not permit interest demands for late payments of service charges. The Tribunal reject the Respondent's reliance upon the Late Payment of Commercial Debts (Interest) Act 1998 because the demand of service charges is not for business purposes. The full amount of interest charges paid must be refunded.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(g) Flat 3, 24 Hungerford Road

Claude and Samar Abi-Gerges

Interest: The terms of the lease for this property do not permit interest demands for late payments of service charges. The Tribunal reject the Respondent's reliance upon the Late Payment of Commercial Debts (Interest) Act 1998 because the demand of service charges is not for business purposes. The full amount of interest charges paid by The Abi-Gerges must be refunded.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(h) Flat 4, 24 Hungerford Road

Joceline Gabriel

Interest: The terms of the lease for this property do not permit interest demands for late payments of service charges. The Tribunal reject the Respondent's reliance upon the Late Payment of Commercial Debts (Interest) Act 1998 because the demand of service charges is not for business purposes. The full amount of interest charges paid by Ms Gabriel must be refunded.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(g) Flat 5, 24 Hungerford Road

Simon Noyes

Interest: The terms of the lease for this property permit interest demands for late payments of service charges by clause 4(4) of the lease [391].

Only service charges overdue after 25th October 2018 are subject to interest. Any other interest charged must be refunded. The Respondent's solicitors holding funds in relation to this must provide a completion statement setting out how any interest charges are calculated.

Insurance premiums: The Tribunal found that the premiums charged by the Respondent were excessive and that the Respondent must refund 50% of the premiums charged for the years 2013-2019.

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

(4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.

- (5) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002
- (6) The Tribunal fees are to be paid by the Respondent to the Applicants in the sum of £300 within 28 days.

### **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to whether administration charges are payable.
2. The Applicants also seek an order for the limitation of the Respondent’s costs in the proceedings under section 20C of the Landlord and Tenant Act 1984 and an order to reduce or extinguish the tenant’s liability to pay an administration charge in respect of the litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
3. At a case management conference on 17<sup>th</sup> September 2019 the Applicants sought to include a challenge to the insurance premiums charged to the leaseholders for the period going back 6 years. Judge Dutton at the case management hearing (“CMH”) allowed that application.
4. It is to be noted that the leaseholders have acquired the freehold of both blocks under an enfranchisement in August 2019 and certain sums of money reflecting the disputed interest charges and the costs associated with reminder letters are being held by the solicitor for the Respondent as stakeholder pending the outcome of these proceedings.
5. At the CMH the tribunal identified the following issues to be determined:
  - (a) The reasonableness and payability of the insurance premiums demanded of the applicants in the period of 6 years prior to the date of enfranchisement.
  - (b) In respect of the interest charges, not being strictly a service charge, the parties have asked for a determination to enable the funds held by the solicitors to be distributed
  - (c) Whether the interest is payable by reason of section 21B of the 1985 Act, it being alleged that the notices accompanying demands was deficient

- (d) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made
  - (e) Whether an order for reimbursement of the application/hearing fees should be made.
6. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

7. Mr Joyce (Flat 1, 24 Hungerford) appeared for the Applicants accompanied by Mr Lewis (Flat 1, 22 Hungerford). Mr Stavrou, a director of Hammend Limited, was in person.
8. The Tribunal initially sought to clarify whether the documentation directed to be produced by the Respondents was available in the appeal bundle. That direction was ordered on 17<sup>th</sup> September 2019 and the details are set out at paragraph 3 (a)-(l) of that order [21-22].
9. The parties were able to refer the Tribunal to various documents as follows:
- 3(a) summary of policy terms and conditions [165-171]
  - 3(b) claims history taken into account. Although a claims history has been provided [172-178], there is no document to clarify what claims history has been taken into account.
  - 3(c) additional risks covered eg for commercial premises: Whilst insurance certificates indicated that the block policy includes some commercial premises, there is no documentation evidence to answer this question.
  - 3(d) any remuneration, commission, other sources of income and related income or other benefits in connection with placing or managing insurance received by the landlord/associated landlord, its broker or other agents re insurance: Mr Stavrou explained that Kitty Co initially obtained a commission when they were purchasing insurance and introduced other insurance purchasers to the broker. That is the reason that have continued to earn commission from the block policy. Mr Stavrou is a shareholder of Kitty Co. The cost of the commission received by Kitty Co is passed on to the Applicants to pay as part of the insurance premiums.
  - 3(e) any other sources of income and related income or other benefits including commissions arising from the provision of insurance. In response to this request, Mr Stavrou says he send the directions order to his brokers, Nsure, and they have responded [179] but this does not provide an answer.
  - 3(f) what services are provided for the income received. Mr Stavrou confirmed that Kitty Co provide no services for the income received other than the initial introduction to the insurance brokers of other properties to be included in the block policy for properties that they jointly own. He referred the Tribunal back to the answers provided [179] by Nsure in response to Mr Stavrou sending them the directions.

## **The background**

10. The properties which are the subject of this application are no. 22 and no. 24 Hungerford Road, two houses converted into flats. Each house contains 6 flats.
11. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
12. The Applicants hold long leases of their respective properties which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

## **The leases**

13. The terms of the leases of the subject properties differ and each lease will be referred to separately.

## **Flat 1, 22 Hungerford**

14. The lease is dated 6<sup>th</sup> December 1974 and the original parties to the lease were Choice Investments Limited as Lessor and Antonios Christodoulou and Zoe Georgiadou as Lessee for a term of 189 years from 29<sup>th</sup> September 1974 as amended by the lease dated 20<sup>th</sup> June 2014, the parties to the lease being Hammend Limited as Lessor and Philip John Miller as Lessee. The lease is for a term of 189 years from 29 September 1974. The lease was assigned to David Lewis in or around 2013.
15. Clause 1 of the lease provides a definition of the Property “...*ALL THAT flat (hereinafter called “The flat”) numbered 1 and being on the ground floor of the said building known as 22 Hungerford Road, aforesaid and shown coloured red on the Plan annexed hereto and indicating the whole of the structure comprising the floor of the Flat and one half part in depth of the structure between the ceilings of the Flat and floors of the flat above it and (subject to clauses 5(4) and 7(1) hereof) the internal and external walls between such levels SUBJECT TO the restrictions in the First Schedule hereto TOGETHER WITH the easements rights and privileges specified in the Second Schedule hereto BUT EXCEPTED AND RESERVED as mentioned in the Third Schedule hereto TO HOLD the said premises hereby demised (all of which when intended to be referred to ... hereinafter called “the demised premises”)*”
16. By clause 5(2) “*THAT THE Lessors shall at all times during the said term..... to insure and keep insured the demised premises....*”

17. Clauses 2,3 and 4 set out the Lessee's obligations. The Landlord's obligations are set out in clause 5 of the lease.

#### **Flat 2, 22 Hungerford**

18. The lease is dated 28<sup>th</sup> January 2003 and the original parties to the lease were Hammend Limited as Lessor and Stefan Christian Pop as Lessee for a term of 99 years from 25<sup>th</sup> December 2002. The lease provides the tenants share of total expenditure is one-twelfth by clause 7.
19. Clause 2 sets out the demised premises; Clause 3 sets out the Tenant's covenants to pay rent; clause 4 sets out the Tenant's covenant to pay service charges "*(4).....Further Charge and Service Charge shall have become due and remain unpaid fourteen days after the due date for payment to pay to the Lessors on demand interest thereon at the rate of four percent per annum above Base Rate of Lloyds Bank plc for the time being ....*"

#### **Flat 4, 22 Hungerford**

20. The lease is dated 17<sup>th</sup> March 2017 and the original parties to the lease were Hammend Limited as Lessor and Angelina Dan Shuen Foo as Lessee for a term of 189 years from 22<sup>nd</sup> June 1979.
21. The demised premises are described at Paragraph 1(3) of the lease.
22. Paragraph 4(4) sets out the Tenant's covenant to pay service charges and in relation to interest "*.....If such Service Charge shall have become due and remain unpaid fourteen days after the due date for payment to pay to the Lessors on demand interest thereon at the rate of five percent per annum above the Base Rate of Lloyds Bank place for the time being in force...*"
23. By paragraph 5(4)(c) as part of the expenditure of the service charge, the Lessor covenants to "*insure and keep insured the Building and other structures.....as the Lessors reasonably think fit....in some insurance office of repute in the full reinstatement value .....*"
24. By paragraph 7 of the Particulars, the Tenant's share of the total expenditure is one-twelfth.

#### **Flat 5, 22 Hungerford**

25. The lease is dated 24<sup>th</sup> August 2009 and the original parties to the lease were Hammend Limited as Lessor and Lucia Torres-Etchegoyen as Lessee for a term of 189 years from 10<sup>th</sup> August 1973. Thereafter at a date unknown to the tribunal the lease was assigned to Marta Majos.



26. The demised premises are described at Paragraph 3 of the particulars of the lease.
27. Paragraph 4(4) sets out the Tenant's covenant to pay service charges and specifically in relation to interest ".....*If such Service Charge shall have become due and remain unpaid fourteen days after the due date for payment to pay to the Lessors on demand interest thereon at the rate of five percent per annum above the Base Rate of Lloyds Bank place for the time being in force...*"
28. By paragraph 5(4)(c) as part of the expenditure of the service charge, the Lessor covenants to "*insure and keep insured the Building and other structures.....as the Lessors reasonably think fit....in some insurance office of repute in the full reinstatement value .....*"
29. By paragraph 7 of the Particulars, the Tenant's share of the total expenditure is one-twelfth.

#### **Flat 1, 24 Hungerford**

30. The lease is dated 12<sup>th</sup> December 1974 and the original parties to the lease were Choice Investments Limited as Lessor and Demetrious Efastathiou and Georgia Efastathiou as Lessee for a term of 99 years from 29<sup>th</sup> September 1974. In or around 1988 the lease was assigned to Tom Joyce.
31. Clause 1 of the lease provides a definition of the Property "*...all that .... numbered 1 and being on the ground floor of the said building known as 24 Hungerford Road, aforesaid and shown coloured red on plan annexed hereto and including the whole of the structure comprising the floor of the flat and one half part in depth of the structure between the ceilings of the flat and the floors of the flat above it and (subject to clauses 5(4) and 7(1) hereof) the internal and external walls between such levels .....*"
32. Clauses 2,3 and 4 set out the Lessee's obligations. The Landlord's obligations are set out in clause 5 of the lease.

#### **Flat 2, 24 Hungerford**

33. The lease is dated 30<sup>th</sup> April 1981 and the original parties to the lease were Takis Demetriou as Lessor and Guy Stephen Chadwick and Bernice Chadwick as the Lessee for a term of 99 years from 25<sup>th</sup> December 1980. Subsequently the lease was assigned to Dominique Amans.
34. Clause 1 of the lease provides a definition of the Property "*...all that .... numbered 2 and being on the first floor of the said building and including one half part in depth of the structure between the floors of the flat and the ceilings of the flat below it and of the structure between the ceilings of the flat and the floors of the flat above it and*

*(subject to clauses 5(4) and 7(1) hereof) the internal and external walls between such levels .....*”

35. Clauses 2,3 and 4 set out the Lessee’s obligations. The Landlord’s obligations are set out in clause 5 of the lease.

**Flat 3, 24 Hungerford**

36. The lease is dated 4<sup>th</sup> August 1973 and the original parties to the lease were Choice Investments Limited as Lessor and Susan Margaret Lloyd as Lessee for a term of 99 years from 10<sup>th</sup> August 1973. Subsequently the lease was assigned to Claude and Samar Abi-Gerges.

37. Clause 1 of the lease provides a definition of the Property “*...all that .... numbered 3 and being on the first floor of the said building known as 24 Hungerford Road, aforesaid and shown coloured red on Plan no.2 hereto annexed and including one half part in depth of the structure between the ceilings of the Flat and floors of the flat below it and of the structure between the ceilings of the flat and the floors of the flat above it (subject to clause 7(1) hereof) the internal and external walls between such levels .....*”

38. Clauses 2,3 and 4 set out the Lessee’s obligations. The Landlord’s obligations are set out in clause 5 of the lease.

**Flat 4, 24 Hungerford**

39. The lease is dated 29<sup>th</sup> March 1984 and the original parties to the lease were T Demetriou Esq as Lessor and Miss Dora Saphiris as Lessee for a term of 99 years from 25<sup>th</sup> March 1984. Subsequently the lease was assigned to Joceline Gabriel.

40. Clause 1 of the lease provides a definition of the Property “*...all that .... numbered 4 and being on the 2nd floor of the said building known as 24 Hungerford Road, London N.7. in the London Nroough of Islington and including one half part in depth of the structure between the floors of the flat and ceilings of the flat.....*”

41. Clauses 2,3 and 4 set out the Lessee’s obligations. The Landlord’s obligations are set out in clause 5 of the lease.

**Flat 5, 24 Hungerford**

42. The lease is dated 25<sup>th</sup> October 2006 and the original parties to the lease were Hammend Limited as Lessor and Wendy Anne Bresnark as Lessee for a term of 189 years from 18<sup>th</sup> December 1973. Thereafter at a date unknown to the tribunal the lease was assigned to Simon Noyes.

43. The demised premises are described at Paragraph 3 of the particulars of the lease.

44. Paragraph 4(4) sets out the Tenant's covenant to pay service charges and specifically in relation to interest ".....*If such Service Charge shall have become due and remain unpaid fourteen days after the due date for payment to pay to the Lessors on demand interest thereon at the rate of five percent per annum above the Base Rate of Lloyds Bank place for the time being in force...*"
45. By paragraph 5(4)(c) as part of the expenditure of the service charge, the Lessor covenants to "*insure and keep insured the Building and other structures.....as the Lessors reasonably think fit....in some insurance office of repute in the full reinstatement value .....*"
46. By paragraph 7 of the Particulars, the Tenant's share of the total expenditure is one-twelfth.

### **The issues**

47. The Applicants confirm that only four issues arise from the application for the Tribunal to consider:
  - Whether valid demands for service charges had been issued.
  - Whether interest could be demanded for late payments.
  - Whether charges for late payment demand letters at £30 each were permitted.
  - Whether the sums charged for insurance premiums for the 6 years prior to enfranchisement were reasonable.
48. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Whether Service Charge demands were validly demanded**

49. The Applicants rely on the Landlord and Tenant Act 1985, section 21B(1) "*A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges*". They say demands were issued without ever having provided the requisite information.
50. The Respondent admits that he had not aware of this requirement. He took advice after the CMH on 17<sup>th</sup> October 2018, and on 25<sup>th</sup> October 2018 he sent out a compliant demand. The Applicant disputed that date, and referred to the only compliant demand in the appeal bundle dated 27<sup>th</sup> February 2019 [44]. The parties checked their records during the midday break, and both parties agreed that the first compliant demand was sent and dated on 25<sup>th</sup> October 2018.
51. The parties agree that the notice dated 25<sup>th</sup> October 2018 complies with section 21B(1) of the Act.

### **The tribunal's decision**

52. The Tribunal find that the first compliant valid demand for service charges is dated 25<sup>th</sup> October 2018. Some service charges which had previously been the subject of non-compliant demands, became due and payable thereafter.

### **Reasons for the tribunal's decision**

53. The Respondent acknowledges that he was not aware prior to taking advice in October 2018 that a demand for service charges had to be compliant with the Act. He has since then remedied this defect and relies on the notice first served on 25<sup>th</sup> October 2018.

### **Interest charged for late payment of service charges**

#### **Flats 1, 22 Hungerford & Flats 2, 3 and 4, 24 Hungerford**

54. Interest has been charged by the Respondent for late payment. This has been added to the service charge accounts for the first time on 10<sup>th</sup> April 2019.
55. The Respondent says that he has always referred to outstanding invoices being subject to an interest payment and refers us to the demand dated 27<sup>th</sup> February 2019 and the clause at the end of that letter which states "NB: Interest will be charged on overdue sums at the rate of 8% above the Bank of England Base Rate or such other amount as may be expressed in your lease" [46]. The reason he gives for only adding interest on 10.04.2019 is that he says he noticed at that point that it had not been added.
56. The Applicants say there is no clause in the lease to permit the Respondent to charge interest and that this was paid under protest in order to complete the collective enfranchisement.
57. The Respondent acknowledges that there is no contractual clause upon which he can rely in relation to interest charges. However, he seeks to rely on what he refers to as 'the late payment act'. He did not bring a copy of the legislation to the hearing, and could not refer to the date of the Act or the section upon which sought to rely.
58. There was some discussion during the hearing as to whether interest would be permitted if the Respondent was in breach of s.21B of the Act.

### **The tribunal's decision**

59. The tribunal determines that the Respondent is not permitted to charge interest for late payment in respect of the above properties and he must

refund all interest paid by the Applicants who are the leaseholders of the above named properties.

### **Reasons for the tribunal's decision**

60. Firstly, there is no contractual term within the leases for the above properties permitting the Respondent to charge interest on late payments.
61. Secondly, the Tribunal rejects the Respondent's reliance upon the Late Payment of Commercial Debts (Interest) Act 1998. By section 2 of that Act it defines the contracts to which the Act applies: "(1) This Act applies to a contract for the supply of goods or services where the purchaser and the supplier are each acting in the course of a business, other than an excepted contract" which does not apply to this situation.

### **Flats 2, 4, 5, 22 Hungerford Road & Flat 5, 24 Hungerford Road**

62. Flat 2, 22 Hungerford is bound by the terms of their lease to pay 4% above base rate on service charges remaining outstanding for 14 days.
63. Flats 4 and 5, 22 Hungerford and Flat 5, 24 Hungerford are bound by the terms of their individual leases to pay 5% above base rate on service charges remaining outstanding for 14 days.

### **The tribunal's decision**

64. The tribunal determines that the Respondent is entitled only to late payment interest upon the expiry of 14 days after 25<sup>th</sup> October 2018

### **Reasons for the tribunal's decision**

65. Until Mr Stavrou took advice in October 2018, the service charge demands were not compliant with the requirements under s.21B(1) of the Landlord & Tenant Act 1985 and so the demands were not valid. As no valid demand was made, the charge could not become due in accordance with the term in the leases, and no interest could be demanded.
66. By a valid demand dated 25<sup>th</sup> October 2018, the Respondent remedied the defective demands. That demand is compliant and outstanding service charge demands from that date will attract the contractual interest as set out in the lease.
67. The Respondent will need to recalculate the demands in relation to interest on the basis of the above decision, so that the solicitors holding funds can refund the correct amounts to the Applicants.

### **Insurance premiums from 2014 to 2019**

68. The Lessor by the terms of the leases is obliged to insure the building. By the terms of the lease the Lessees pay service charges, to include such insurance premiums.
69. The Applicants assert that they have been subject to unreasonable charges in respect of the insurance premiums because their properties have been included on a block policy with other commercial properties, and because introductory commissions are paid at their expense. Those commissions are to a company called Kitty Co. Mr Stavrou is a shareholder of that company and he says that Kitty Co obtained a commission merely on the basis of introducing business some years ago to the insurance brokers.
70. The Tribunal lacked information requested by the directions in respect of how claims or other properties on the block policy affected the premiums.
71. The premiums that have been charged to the Applicants since 2013, by Ageas, are as follows:
- (a) 18<sup>th</sup> April 2019 - £7253.30 [125]
  - (b) 18<sup>th</sup> April 2018 - £7018.94 [132]
  - (c) 18<sup>th</sup> April 2017 - £6659.32 [133]
  - (d) 18<sup>th</sup> April 2016 - £6430.16 [137]
  - (e) 18<sup>th</sup> April 2015 - £6107.55 [141]
  - (f) 18<sup>th</sup> April 2014 - £6047.55 [144]
  - (g) 18<sup>th</sup> April 2013 - £6038.73 [147]
72. The Applicants provided comparable quotations for buildings insurance in the same terms as provided by the Lessors. These quotations are as follows:
- (a) £2287.37 From Instant Underwriting, a quotation dated 29<sup>th</sup> August 2019 in relation to 22-24 Hungerford Road, N7 9LF. [150]
  - (b) £2813.72 From EML Insurance Brokers for Ageas, a quotation dated 29<sup>th</sup> August 2019 in

relation to 22-24 Hungerford Road, N7 9LF.  
[154]

(c) £2652.14 from Edison Ives, a quotation dated  
30<sup>th</sup> August 2019 in relation to 22-24  
Hungerford Road [157]

73. The previous cover provided by Ageas to the Respondents on the block policy in relation to 22-24 Hungerford Road is on the same terms as the quotation provided on behalf of Ageas to 22-24 Hungerford Road Freehold Ltd. All issues raised in relation to trees and of being in a subsidence area have always been noted on the Ageas block policy.  
[229]

### **The tribunal's decision**

74. Based on its expert knowledge and experience, the tribunal determines that the Respondent must refund to the Applicants 50% of the insurance premiums charged for these 6 years.

### **Reasons for the tribunal's decision**

75. The Tribunal found that the Respondent had failed to comply with directions adequately. In particular he had failed to provide details and percentages of how the subject properties were affected by all the other properties on the block insurance policy. Nor had the Tribunal been provided with the information as to whether any claims made by other properties had affected the subject properties insurance premium.
76. The tribunal noted the three quotations obtained by the Applicants since enfranchisement. These were on the same terms as had previously been provided for the Respondent on the block policy. Yet the quotations obtained are significantly cheaper and this despite one quotation being for insurance cover from Ageas, the same insurance company providing the block policy.
77. There were also concerns about the commission paid in effect by the Applicants to Kitty Co (of which Mr Stavrou is a shareholder) although that company is not a broker. They having obtained a commission from the broker as a customer for introducing other customers some years earlier.
78. The Tribunal were satisfied that the quotations obtained by the Applicants were truly comparable in terms to the Respondent's previous block policy, and that rates previously charged by the Respondent had been unreasonable. On that basis a the Respondent must refund of 50% of the premiums paid by the Applicants for the last 6 years.

### **Charges for £30 per late demand letter**

#### **Charged to Flats 1,2,5 of 22 Hungerford Road**

79. Flats 1, 2 and 5 had each been sent one letter demanding payment for service charges when these became overdue. The charge levied by the Respondent for each of those letters was £30.
80. The Applicants say these charges are excessive.

#### **The tribunal's decision**

81. The tribunal determines that the charge for these letters be refunded.

#### **Reasons for the tribunal's decision**

82. Mr Stavrou for the Respondent says he was entitled to charge these sums. However, during the hearing he helpfully decided that he would not pursue this argument. He agreed that these sums would be refunded to Flats 1, 2 and 5 of 22 Hungerford Road.

#### **Application under s.20C and refund of fees**

83. The Applicants seek a refund of the fee paid to the Tribunal. Having heard submissions, the Tribunal considers it just in the circumstances that the Respondent pays to the Applicants the sum of £300 within 28 days.
84. At the hearing, the Applicants applied for an order under section 20C of the 1985 Act. This is now largely academic further to the completion of the enfranchisement in August 2019, but for clarity and certainty, having heard the submissions from the parties and taking into account the determinations above, the tribunal makes an order under this provision so that the Respondent cannot seek to recover any costs of these proceedings against the Applicants.

**Name:** Judge D Brandler

**Date:** 21<sup>st</sup> December 2019



## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **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 21B**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

### **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 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

## **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **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.

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).