



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

<b>Case Reference</b>	:	CHI/OOMW/LSC/2019/0106
<b>Property</b>	:	30 Station Road, Brading. Sandown, Isle of Wight, PO36 0DY
<b>Applicant</b>	:	Angela Gaffney
<b>Representative</b>	:	N/A
<b>Respondents</b>	:	(1) Southern Housing Group Limited
<b>Representative</b>	:	N/A
<b>Type of Applications</b>	:	Determination of service charge under S27 Landlord and Tenant Act 1985
<b>Tribunal Members</b>	:	Judge A M Lock
<b>Date of hearing</b>	:	25 February 2020 Determined on the papers

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**DECISION**

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**Background**

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and reasonable for the years 2018/2019 and 2019/2020.
2. The property which is the subject of this application is a small block of 4 purpose built flats.

3. 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.
4. On 9 July 2019 the Tribunal issued directions in relation to the application under section 27A. They provided for the application to be determined on written submissions and without a hearing unless a party objected within 28 days. There was no such objection.
5. The Respondent has provided
  - a signed and dated statement with a statement of case.
  - A copy of the lease dated 26 August 1994
  - Service charge demand for the year 2018/2019 together with statement of expenditure
  - Service charge demand for the year 2019/2020
  - Insurance costs charges for 2018/2019 and 2019/2020
  - Photograph of Aerial and meter housing
  - Quarterly bill for new electricity meter
  - Revised estimates for electricity charges for years 2018/2019 and 2019/2020
6. The Applicant has provided
  - A copy of invoice for quarterly service charges dated 25/03/2017, 25/06/2017, 25/09/2017, 25/12/2017
  - A copy of the Annual service charge statement 2016/2017
  - A letter dated 06 March 2018 from the respondent enclosing a refund cheque for £3,809.65 in respect of credit on her account.
  - A copy of the estimated service charge expenditure for the period 01/04/2018 to 31/03/2019
  - Revised estimated service charge expenditure for the period 01/04/2018 to 31/03/2019
  - A copy of Actual service charge expenditure for the period 01/04/2018 to 31/03/2019
  - A copy of the estimated charge expenditure for the period 01/04/2019 to 31/03/2020
  - A copy of estimated contribution to redecoration programme for future works (dated 06 November 2019) for consultation
7. The matter came before the Tribunal for a paper determination on 25 February 2020.

**The Decision:**

8. The Applicant asked the Tribunal to decide whether the works are reasonable and payable under the terms of the lease.
9. A copy lease has been provided [at pages 31 to 49 of the bundle] dated 26 August 1994 between South Wight Housing Association Limited (the

lessor) and Ivor John Harding and Sylvia Joy Harding (referred to as the tenant).

10. The lease has transferred to Mark Gaffney and Angela Gaffney by Notice dated 3 January 2007.
11. Under Clause 2 (r) of the lease the lessee is to *“pay the lessor in each year one equal part (based on the number of flats comprising the building) of the cost (calculate as provided in the Sixth Schedule hereto) of providing the repairs and services and things specified in the Seventh Schedule hereto and of insuring the building in accordance with clause 3 (c) hereof together than the costs (if any) of discharging or insuring against such obligations of the lessor as are by law required to be borne exclusively by the lessor) such payments to be made at the times and in the manner provided by the said Sixth Schedule*
12. Under the Sixth Schedule, Clause 1 states: *“The cost of repairs services and other things shall be the aggregate of:*
  - (a) the actual cost as certified by the lessor of the repairs and the services and other things specified in the Seventh Schedule (including all professional fees incurred in connection therewith)*
  - (b) Such sum (if any) as (after making allowances for any reserves in hand) may be estimated by the lessor (who shall act as an expert and not as an arbitrator) as required to provide a reserve to meet part or all future cost of such repairs services and things as the lessor anticipates will or may arise thereafter during the remainder of the term hereby granted and*
  - (c) A management charge as certified by the lessor*
13. Clause 2 states: *“Without prejudice to the generality of the foregoing the tenant shall be liable for;*
  - (a) The full cost of the maintenance repair and renewal of the footpath coloured green on the plan*
  - (b) On half of the full cost of the maintenance repair and renewal of the footpath coloured blue on the plan*
14. The Seventh Schedule states:
  - (a) “To keep the structure and external parts of the building (including the roof chimney foundations walls windows and external doors the sewers drains gutters cables and wires the use of which is common to one or more of the flats in the building) in repair and properly decorated*
  - (b) To maintain the paths services drains drives parking areas and other common parts retained by the lessor but over which rights are granted to the tenant*
  - (c) To perform all such other covenants as are by law implied herein on the part of the lessor”*
15. Part II of the Seventh Schedule states:

*“Rewiring maintaining decorating cleaning and securing the lessor’s property or any part thereof or any equipment fixtures or apparatus therein and providing services of any kind whatever for the reasonable comfort and reasonable convenience of the tenant.”*

16. In her application, the Applicant has set out the questions she wishes the Tribunal to decide. These are:
  - The increase in the management fee for 2018/2019 from £25 to £177.43 and for 2019/2020 to £181.69. She states that this is currently 44% of the service charge for 2018/2019
  - A rise in Insurance costs from £86 to £126.37 for the year 2018/2019
  - Whether it is legal to charge a blanket fee when she is only liable for the areas outlined in her lease
  - Further charges for the gardening fee
  - £400 charge for TV aerial which had been reduced to £173 for the year 2018/2019 but increased again in 2019/2020 to £400
17. In her letter dated 8 January 2020 the Applicant accepts that the Respondent has agreed to remove the gardening charges.
18. The Respondent has also accepted that the Block communal electricity charges have been reduced (page 54) stating: “new estimates for 2018/2019 and 2019/2020 have been produced and sent to Mrs Gaffney reducing her contributions to £43.27 and £43.78 respectively for the 2 years in question. The revisions are attached as Exhibits I and J the actuals reflect this; the cost for electricity being £42.50.”
19. Whilst I see that the costs for 2018/2019 have been reduced (page 125) those for 2019/2020 (Page 129) do not appear to have been set out as reduced. Nevertheless, the respondent has agreed that a reduction will be or has been made.
20. The issues remaining are therefore the management fees and the insurance costs. There is no argument that there is a liability to pay insurance and management fees. The issue is the reasonableness of those costs.

**Insurance costs.**

21. Clause 3 (c) of the lease provides “At all times during the said term [the lessor] to keep insured against loss or damage by an insurance company of repute in a sum which in the opinion of the lessor represents the full reinstatement value thereof plus Architects’ and Surveyors’ fees And also to insure against such other risks for such amounts which in the opinion of the lessor may from time to time be considered reasonably necessary and to make all payments necessary to keep such insurance in force within seven days after the same shall become payable And as often as

any part of the building shall be destroyed or damaged as aforesaid to rebuild and reinstate the same.”

22. The Applicant’s share of the insurance costs have risen from £86 to £127.37 for the year 2018/2019.
23. The Respondent has insured the property via a block insurance policy. The insurance costs are apportioned throughout the Southern Housing Group properties of 4,283 and not solely for the 4 flat block. The Respondent has provided a copy of the policy including a summary of cover and limits.
24. The applicant has not produced any comparable insurance estimates, other than those costs of previous years. There is no detailed comparable.
25. In *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 264 (LC), the Upper Tribunal stated at [30]:

*The LVT was dealing with the evidence it had before it and properly directed itself to the relevant and correct law, setting out the principle that the landlord is not obliged to shop around to find the cheapest insurance. So long as the insurance is obtained in the market and at arm’s length then the premium is reasonably incurred.... the landlord must prove either that the rate is representative of the market rate, or that the contract was negotiated at arm’s length and in the market-place.*
27. In the more recent decision of *Cos Services Ltd v Nicholson* [2017] UKUT 382 (LC) the test in *Avon Freeholds* was found to be too narrow. Instead, relying on the earlier decision in *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173 and the much more recent decision of the Court of Appeal in *Waler v London Borough of Hounslow* [2017] EWCA Civ 45, the Upper Tribunal found it was necessary to consider both process and outcome in deciding whether insurance costs had been “reasonably incurred”:

*37. It is clear ... that the burden is on the landlord to satisfy the relevant tribunal on the balance of probabilities that the costs in question have been reasonably incurred...*

*47 .... If, in determining whether a cost has been "reasonably incurred", a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in Waler . I agree with the Court of Appeal that this cannot have been the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether*

*the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in Forcelux , necessarily a two-stage test.*

*48 Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they "compare like with like"), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.*

*49 It is open to any landlord with a number of properties to negotiate a block policy covering the entirety, or a significant part, of their portfolio. That occurred in Forcelux itself, and the landlord satisfied the Tribunal in that case that the charges had been reasonably incurred. It is however necessary for the landlord to satisfy the Tribunal that invocation of a block policy has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant compensating advantages to them.*

28. The evidence submitted by both sides has to be viewed in light of the two stage approach set out in *Cos Services*. The burden of proof is on the Respondent Lessor.
29. So far as process and decision-making are concerned, the Respondent has not clearly explained why it was decided to take out insurance with Zurich as opposed to another insurer. However; it is not "*necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred*".
30. The Applicant's evidence is also lacking. She has failed to provide any alternative quotes or to show that the previous quote is truly comparable. She has not produced the current policy to establish any comparison with the Zurich insurance provided.

31. The Tribunal has considered whether, in light of the concerns about the quality of evidence in this case, it should list the matter for an oral hearing with directions for more evidence to be adduced on specified points. However, it has concluded it would be disproportionate to do so. Tribunal time and resources have already been expended on this case in which the sums in dispute are modest. Accordingly, we do the best we can on the evidence the parties have chosen to make available.
32. In the Tribunal's view, as an expert body, the premiums charged by the Respondent over the period for a purpose built 2 bedroomed flat are not unreasonably high. There is no evidence to suggest that the premium might be unreasonably high.
33. The Tribunal finds in respect of these years 2018/2019 and 2019/2020, on a balance of probabilities premium was in a reasonable amount. It has been reasonably incurred.

**Management charges:**

35. The Tribunal considered the charges made by the Respondent. The Sixth Schedule clause 1 (c) makes provision for a management charge to be made. The previous management charge of £25 per year was exceptionally low. The applicant is challenging the charges of £177.43 for year 2018/2019 and £181.69 for 2019/2020.
35. The Respondent has stated that Southern Housing Group charges a standard management fee per right to buy and former shared ownership leasehold unit rather than a fee based on a menu of charges. It is the Respondent's case that the new costs still represent reasonable value and are likely to be less than comparable landlords. The respondent states that the Group did approach an estate Agent on the Isle of Wight who provided an example of a similar 4 flat block on the Isle of Wight where the annual management fee was circa £800 per annum.
36. I have considered the evidence provided. I conclude that the amount of the management fee falls within the scale of reasonableness and has been reasonably incurred for the year 2018/2019 and on the figure provided, will be reasonable for 2019/2020.

**S20C application:**

37. The applicant has not been successful in any element of her application. This does not necessarily mean that a S20C order cannot be made. However, I have considered all the circumstances of this case and

conclude that it would not be just or equitable to make an order in this case.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking