FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UB/LIS/2019/0011**
Property	**:**	**Flats 2 – 9, 11 – 14, 16 – 18, 21 – 27 & 29 – 30 Langhornes, Stock Road, Billericay, Essex CM12 0BQ**
Applicants	**:**	**The Leaseholders Listed on the Application Form for whom signed authorisations have been Provided**
Representative	**:**	**Adam Breathwick (Flat 9)**
Respondent	**:**	**Long Term Reversions (Harrogate) Limited**
Managing Agent	**:**	**Pier Management Limited**
Date of Application	**:**	**17th April 2019**
Type of Application	**:**	**A determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)** **To limit the service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)**
Tribunal	**:**	**Judge JR Morris**
Date of Decision	**:**	**15th August 2019**

DECISION

Decision

1. The Tribunal determines that the following insurance premiums to be payable:
   1st July 2011 to 30th June 2012 of £16,039.66
   1st July 2012 to 30th June 2013 of £18,024.28
   1st July 2013 to 30th June 2014 of £20, 709.34
   1st July 2014 to 30th June 2015 of £24,634.37
   1st July 2015 to 30th June 2016 of £27,730.92
   1st July 2016 to 30th June 2017 of £31,500.00
   1st July 2017 to 30th June 2018 of £12,205.21
   1st July 2018 to 30th June 2019 of £14,255.19

2. The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

Reasons

Application

3. An Application was made on 17th April 2019 for a determination as to the reasonableness and payability of the service charge pursuant to section 27A Landlord and Tenant Act 1985. The item in issue was the insurance premiums incurred for the years:
   1st July 2011 to 30th June 2012 of £16,039.66
   1st July 2012 to 30th June 2013 of £18,024.28
   1st July 2013 to 30th June 2014 of £20, 709.34
   1st July 2014 to 30th June 2015 of £24,634.37
   1st July 2015 to 30th June 2016 of £27,730.92
   1st July 2016 to 30th June 2017 of £31,500.00
   1st July 2017 to 30th June 2018 of £23,044.80
   1st July 2018 to 30th June 2019 of £14,255.19

4. The Applicants also applied for an order under section 20C of the Landlord and Tenant act 1985.

5. Directions were issued on 14th May 2019. The Tribunal informed the parties that the Application would be determined on or after 15th July on the basis of written representations, unless either party makes a request for an oral hearing within 7 days of the Directions. No request was made and the parties complied with the directions for written representations.

6. A late representation was submitted by the Respondent on 22nd July 2019 and replied to by the Applicant also on 22nd July 2019 but as these were submitted after the date in the Directions and referred to the premium for the year 1st July 2019 to 30th June 2020 which was not a year to which the application related, the representation and response were not considered by the Tribunal. With the representation the Respondent also requested the Tribunal stay its issuing of the decision as it was hoped that the premium for one or more of the years in issue might be settled. The Tribunal agreed to hold its decision

until the 12th August 2019 as it is always preferable that the parties reach agreement. However, a subsequent e mail dated 14th August 2019 from the Respondent stated agreement could not be reached and therefore the Tribunal issues its decision.

The Law

7. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

8. The Tribunal did not inspect the Property but notes from the Application form that it is a block of 30 one, two- and three-bedroom purpose-built flats.

The Lease

9. A copy Lease was provided for Flat 9 which the Tribunal understands is common to all the flats. The Lease is for a term of 125 years from the date of the Lease (8th December 1989) at a ground rent of £75.00 per annum increasing every 21 years by £50.00. The Lease is between Deviland Limited (the original landlord/lessor and freeholder) (1) and Paul Hannaway (the original tenant/lessee of Flat 9) (2) and Rampbridge Limited (the Management Company referred to in the Lease as "the Company") (3). The lessor's interest has since been assigned to the Respondent, Long Term Reversions (Harrogate) Limited, and the lessee's interest to Adam Breathwick, the Applicants' Representative. The role of the Management Company now appears to be taken over by the Respondent as landlord and freeholder. Its Managing Agent is Pier Management Limited.

10. Under Clause 4 (7) of the Lease the Management Company covenants to:
    (a) To insure with reputable insurers the Development against loss or damage by all reasonably foreseeable risks in the full value thereof in the names of the Lessor and the Company with the interests of the Lessee and any mortgage noted (such noting being in such form as the insurers think fit) and to supply reasonable evidecen that the policy is in force.

11. The Tenant's obligation to pay the insurance premium is contained in clause 2(2) and paragraph 1 of the Fourth Schedule of the Lease as follows:
    2(2) states:
    To pay by equal quarterly instalments on the usual quarter days n every year one thirtieth of the cost of the matters mentioned in Part I of the Fourth Schedule here to ….
    Paragraph 1 of the Fourth Schedule states*:*
    The expense (including profito of the Lessor and the Compnay in carrying out their obligations under this Lease.

12. The Respondent Landlord and its Managing Agent, Pier Management Limited, arrange the insurance. The apportionment of the insurance is not specified in the Lease.

The Issue & Submissions

13. The Applicants' Representative submitted that the insurance premiums for the years in issue are excessive. The Applicants' Representative provided a table of the premiums from 2007 to 2019 and the year on year percentage increase which he submitted was unreasonable.

Policy Period	% increase on previous year's quote	Premium £
2007 – 2008	4.53	12,310.00
2008 – 2009	4.20	12,827.00
2009 - 2010	5.01	13,469.00
2010 - 2011	5.00	14,142.50
2011 - 2012	13.41	16,039.66
2012 - 2013	12.38	18,024.28
2013 - 2014	14.90	20,709.34
2014 - 2015	18.95	24,634.37
2015 - 2016	12.57	27,730.92
2016 - 2017	13.60	31,500.00
2017 - 2018	12.48	35,431.00 reduced to 23,044.80
2018 - 2019	6.41	24,520.00 reduced to 14,255.19

14. Below is set out the Respondent's statement of case stating why the premiums are considered reasonable. This is followed by the Applicants' Representative's reply.

Respondent's Written Statement of Case

15. The Respondent Landlord provided a Statement of Case prepared by Mr Bland, the Respondent's Head of Litigation. In it the Respondent stated that the Insurance is placed by the Freeholder Landlord on a portfolio basis, not by individual property. The Certificates and policy booklet were provided.

16. The Respondent stated that the certificates and policy booklet are comprehensive and there is nothing they were able to comment on as they are not specialised in insurance and rely upon the broker, who is FCA regulated, to arrange insurance and negotiate terms.

17. The broker undertakes market testing on behalf of the Respondent and the Respondent is not obligated to renew with either broker or insurer. The insurance for the portfolio has in the past been placed with Allianz, Brit, QBE, Covea, and AXA and the brokers have included Oxygen, The Insurance Partnership, Jelf Insurance and more recently Lockton.

18. Whilst the Respondent relies on its broker to test the market, it does consider whether insurers and brokers alike are suited to its portfolio and the needs of the portfolio.

19. The Respondent referred to *Avon Estates Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC) as follows:
"[30] … So long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred. There is nothing to suggest that the insurance was arranged otherwise than in the normal course of business, and the [tenants] did not seek to adduce evidence to support such a contention. The [tenants'] complaint is that it might be possible to obtain a cheaper rate, but it is not to the landlord to establish (as it has been expressly found in *Berrycroft*) the insurance premium was the cheapest that could be found in order for the costs to be reasonably incurred. The words "properly testing the market" used by Mr Francis in *Forecelux* in 2001, do not in any way detract from the decisions of the Court of Appeal in *Berrycroft* and *Havenridge* that 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."

20. The Landlord does not derive commission from this Property in isolation. The Respondent's Group own a large portfolio and it is the ability to 'bulk buy' that enables them to earn a commission on that portfolio as a whole in return for work done.

21. The Group (of which the respondent forms part) does benefit from this portfolio commission and in the interests of transparency this has been disclosed in the attached letter from Lockton. The letter provided disclosed a commission of 15%. It was confirmed that Pier Management Limited does not earn any commissions from insurance.

22. In return for the commission the Regis Group undertakes work to ease the administrative burden on both the broker and the insurer. This includes the instruction of agents and external surveyors to arrange reinstatement valuations, health and safety surveys, supplying details of such valuations and reports for renewals, advising insurers of health and 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 records for the portfolio on claims experience and advising the Landlords' finance companies accordingly.

23. It was added that it would be fair and reasonable to say that if this Property as a single block was presented to a broker or insurer in isolation that no commission would be payable at all.

24. The insurance is index linked and therefore the premium will increase by a small percentage on each renewal. In addition, there have undoubtedly been increases based on claims experience. It was submitted that the significant claims experience at the Property has resulted in premium increases. A claims schedule was attached. It was said that the Applicant is likely to find when presenting this risk in isolation to insurers that based on the claims experience and losses alone

that they will likely refuse cover or provide restrictions, limited terms or conditions on any policy offered.

25. The Respondents insurance is designed to be a comprehensive 'all risks' policy and the broker has recommended this type of insurance for the portfolio. The Property continues to benefit from this advantageous policy despite its claims experience.

26. The Respondent referred to a number of cases from which it quoted and on which it commented as follows:

27. *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50.
In this decision it was said that the Court of Appeal held that despite the level of premium the cost was incurred in the normal course of business. It was also acceptable for a large commercial landlord to place insurance on a 'block policy' with a single insurer.

28. Whilst this practice may not give the cheapest premium available, it was submitted that the position may be entirely different to other developments within the landlord's portfolio. It did not have to be the cheapest to be reasonable.

29. The Respondent said that it was not commercially viable or reasonable for the Respondent as a large corporate landlord to obtain insurance for each development separately, with different insurers, in order to benefit from the cheapest insurance available. This practice, if adopted would incur significant cost and time to the landlord which would ultimately be charged via the service charge to the tenant.

30. A corporate landlord is unable to benefit from the same levels of flexibility as a private individual. Nevertheless, as a large corporate body it was able to obtain favourable terms and benefits that would not normally be available to a private individual and that such terms are in most cases advantageous to a leaseholder in the event of a claim.

31. *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173
In this decision it was confirmed and accepted that the insurance should be in line with the market norm. The Respondent submitted that it would be reasonable and sensible to assess the market norm as being an average of comparable quotes. The obligation is to provide insurance that is reasonably incurred and is a reasonable amount, not the cheapest.

32. *Havenridge Limted v Boston Dyers Limited* [1994] 49 EG 111
The judgement of Evan LJ was quoted as follows:
"But the question remains, what limit should be placed upon the tenant's obligation to indemnify the landlord, so as to preclude an exorbitant claim or what Cairns LJ described in *Finchbourne* as an "outlandish" result? In my judgement, it matters not whether the limit is expressed as the meaning or true construction of "properly pay" or an implied restriction on the Landlord's right of recovery under clause 2(6)(a). The limitation, in my judgement can best be

expressed by saying that the landlord cannot recover in excess of the premium which he has paid and agreed to pay in the ordinary course of business as between the insurer and himself. If the transaction was arranged otherwise that in the normal course of business, for whatever reason, then it can be said that the premium was not properly paid, having regard to the commercial nature of the leases in question, or equally, it can be supposed that both parties would have agreed with the officious by stander that e tenant should not be liable for a premium which had not been arranged that way."

And

"If this is the correct test, as in my judgement it is, then the fact that the Landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insures might have charged. Nor it is necessary for the Landlord to approach more than one insurer, or to "shop around". If he approaches one insurer, being one insurer of repute, and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of this kind then in my judgement, the landlord is entitled to succeed. The safeguard for the tenant is that, if the rate appears to be high in comparison with other rates that are available in the insurance market at the time, the then the landlord can be called upon to prove that there was no special feature of the transaction which took it outside the normal course of business."

33. The Respondent has considered *Cos Services Limited v Nicholson & Williams* [2017] UKUT 382 (LC) in which HH Judge Bridge referred to *Waaler v Hounslow LBC* [2017] EWCA Civ 45 where the Court of Appeal referred to *Forecelux* paragraph [39] and [40] and commented at [33]
"It is true that the member considered the landlord's decision-making process. But the important point is that he did not stop there. He also tested the outcome by reference to what the cost of the cover was on the market. In other words, the landlord's decision-making process is not the only touchstone. The outcome was also particularly important."

34. The Tribunal should accept that in the absence of evidence to the contrary the Respondent has complied with the decision making process and has met the requirements as set out in *Avon Estates (London) Ltd v Sinclair Gardens Investment (Kensington) Ltd* where HH Judge Walden Smith stated at paragraph 30 So long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred.

35. Lockton and AXA are reputable companies controlled by the FCS as are Amlin, Aviva and QBE who have been approached but could offer no better cover than AXA as evidenced by the letter form Lockton's dated 13th January 2017 providing feedback on benchmarking process to find the most competitive insurer for the portfolio for 2016 to 117 renewal.

36. The Respondent submits the premium to be reasonable.

Applicants' Written Statement of Case

37. The Applicants provided comparative quotations as follows:
26th July 2017 NIG £11,668.79
20th July 2017 Angel (Terrorism) £536.42
23rd May 2018 NIG (Daines Kapp – Brokers) £7,669.59

38. The 2018 quotation from Daines Kapp included a table summarising the alternative quotations obtained as follows:
Willis Real Estate Practice (Quotation underwritten by Axa) £8,125.91
Covea Insurance plc (indicative quotation) £9,520.00
Aegeas Insurance Limited (Quote to be reviewed by underwriter) £9,063.10
Liverpool Victoria Insurance Company Limited £19,752.47

39. The Applicants submitted a statement of case prepared by their Representative Mr Adam Breathwick, in reply to the Respondent's statement.

40. In its statement the Applicants said that in response to the Application the Respondent did not justify the premiums as being reasonably incurred with actual figures and transparency. The Respondent only referred to different brokers and insurers that had been used in the past to support their contention that they had been testing the market. However, the Applicants said that companies may choose to change brokers and insurers for different reasons including commission levels, and not solely due to premium costs or insurance cover. Merely changing brokers or insurer does not show a testing of the market.

41. The Respondents stated that the insurance is placed on a portfolio basis and therefore a competitive rate is obtained. The Applicants submit that the rate is not competitive when compared with the quotations they had obtained in 2017.

42. The Applicants referred to the First-tier Tribunal Decision of reference number CAM/34UF/LSC/2018/0023 in which the Respondent in that case suggested that their portfolio of over 30,000 units would spread the risk across all the properties and this would allow any claims to be absorbed by the larger portfolio. However, in this case the Respondent said that a large number of claims had been made in relation to the Property and this would affect the premium.

43. The Applicants submitted that based on the submission made in the First-tier Tribunal Decision of reference number CAM/34UF/LSC/2018/0023, as part of a large portfolio block policy their apparently high claims record should not affect their premium.

44. The Applicants provide a table of the past premiums from 2007 to 2019 to illustrate that the increase in premium has not been based on the claim's history. It was said that the Insurer's based their quotation on the claims made in the previous three years only.

Policy Period	Cost of Previous 3-year Claims History at point or renewal £	% increase on previous year's quote	Premium £
2007 – 2008	Unknown	4.53	12,310.00
2008 – 2009	Unknown	4.20	12,827.00
2009 - 2010	Unknown	5.01	13,469.00
2010 - 2011	8,907.36	5.00	14,142.50
2011 - 2012	11,120.57	13.41	16,039.66
2012 - 2013	86,735.30	12.38	18,024.28
2013 - 2014	86,823.94	14.90	20,709.34
2014 - 2015	86,828.73	18.95	24,634.37
2015 - 2016	21,919.84	12.57	27,730.92
2016 - 2017	15,548.84	13.60	31,500.00
2017 - 2018	16,970.84	12.48	35,431.00 reduced to 23,044.80
2018 - 2019	12,110.00	6.41	24,520.00 reduced to 14,255.19

45. The Applicants referred to the period 2011 – 2012 where the two-year history showed a very low claims' cost and yet the premium increased by 13.41%. The year 2013 -2014 showed a high claims' cost but the premium increase was 1% lower. Similarly, in 2016 – 2017 there was a low claims cost and yet the premium increased by 1%. Therefore, it was submitted that the increase in premium has not been based on the claims' history.

46. The Applicants stated that they challenged the level of the premium for 2017 - 2018 of £35,431.00. Following the provision of a competitive quotation from NIG for £11,668.79 (copy provided) the premium was reduced by £12,387.00 to £23,044.80.

47. The Applicants also challenged the premium for 2018 - 2019 of £24,520.00 and again after the provision of competitive quotations the premium offer was reduced to £14,255.19. This was rejected by the Applicants as the comparative quotation from NIG was £7,669.59 (copy provided) obtained by insurance brokers, Daines Kapp.

48. The Applicants also provided the e mail extensive exchange between Applicants and Respondents as the Applicants attempted to negotiate a reduction in the premium.

49. If these had not been challenged the premiums would have continued to rise. The Applicants submitted that their comparative quotations showed that the premiums charged by the Respondent were not at the market rate which was below £10,000.00 per annum.

50. The Applicants submitted that the substantial reductions made after challenging the premiums show that they must have been inflated as no explanation for the ability to reduce the premiums has been given.

51. The Respondent stated that the Applicant is likely to find that insurers will refuse cover or provide limitations when presenting the risk [the Property] in isolation with its claims experience. The Applicants said that they had had no such experience and had been able to obtain comparative quotations with all risks cover.

52. At a portfolio level the Applicants said that it might be expected that all the premiums would change in a similar way each year but from the evidence given in the case of CAM/34UF/LSC/2018/0023 this is not so. In referring to the First-tier Tribunal Decisions reference number CAM/34UF/LSC/2018/0023 and reference number CAM/22UD/LSC/2017/0060 the Applicants said that these related to the same portfolio and yet the evidence showed there was no consistency in the premiums that were charged in respect of similar properties.

53. The Applicants then went on to explain why they believed the Respondent had been able to charge what they considered to be higher than market premiums in the years prior to 2016. It was said that firstly, the Respondent is very forceful in pursuing payments by imposing late payment fees. Secondly, that few blocks have the social cohesion to challenge the premium collectively.

54. In addition, it was said that the Respondent was often slow to respond to questions on alternative insurance quotations and when they did so claim that they were not comparable or that certain cover was required which was superfluous or, which, when added, would not have had an effect on the premium. It was also said that although these points are raised with regard to the alternative policies put forward, when pressed further for more explanation the Respondent says it is not an insurer or regulated by the FCA and so cannot respond.

55. The Applicant added that although the Respondent does not benefit from commission, nevertheless the Group to which it belongs, does. It justifies this by giving a list of services which it provides. It is not known how the commission is distributed amongst the Group or how the services are accessed. Some of the services referred to such as health and safety surveys, are charged for separately in individual service charges and others such as keeping accurate records are normal business practices included in the management fee. These are not being paid for out of commission. There appears to be double charging. In particular the Applicants questioned why they paid an "Insurance Administration Fee" of £19.99 each. They suggested that any insurance administration costs should be included in the services paid for by the commission. The Applicants request that these fees are unreasonable in the context of the commission received and should be refunded.

56. With regard to the apportionment of the Block premium between the properties insured the Applicants referred to the Directions which required the Respondent to state: a) how the premium is apportioned to the Property and b) does it take into the claims' history of other properties? Lockton lists a number of insurers who quoted but do not give those quotations. They state that Axa was "the most competitive insurer for the Group" but do not define what criteria or measurement was used. The Applicant submitted that therefore these directions have not been addressed.

57. With regard to the cases quoted by the Respondent. The Applicants stated that the Respondent had not proved that the premium is representative of the market rate or that the contracts were at arm's length. The Respondent had merely submitted a series of historical legal cases with minimal similarities and some over 20 years old. The Applicants said that the insurance industry had changed significantly in that time. The Applicants said that the Respondent had not provided any direct evidence or financial data related to the case or any analysis of how the premiums were reached.

58. The Applicants referred to *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC) in which His Honour Judge Bridge referred to *Waaler v Hounslow LBC* [2017] EWCA Civ 45 in which the Court of Appeal referred to *Forcelux* paragraphs [39] and [40] and commented at [33]:
"It is true that the member considered the landlord's decision-making process. But the important point is that he did not stop there. He also tested the outcome by reference to what the cost of the cover was on the market. In other words, the landlord's decision-making process is not the only touchstone. The outcome was also "particularly important".

59. The Applicants submitted that the Respondent had not provided a clear explanation of the process. It had only provided:
- a statement saying it had obtained a portfolio policy insurance from a broker;
- the insurance certificates; and
- the policy booklet.

60. The Applicant referred to the First-tier Tribunal Decisions reference number CAM/22UD/LSC/2017/0060 in which the judge said that:
"In recent years the problem seems to have worsened with some premiums claimed seeming to be much higher that normal market rates. This ha become such a common circumstance that one is almost driven to conclude that either (a) the landlords are not negotiating strongly enough in the market place because they are not ultimately responsible for the cost or (b) that there are properties in the portfolio which are very high risk which is placing an unfair burden in increased premiums on the low risk tenants or (c) that the premiums are so burdened with commissions that they are simply too high."

61. The Applicants submitted that in this case they had demonstrated that the premiums were higher than the market rate.

62. The Applicants stated that in 2018 the leaseholders had obtained two quotations one from NIG of £7,634.59 and another from AXA (obtained by Willis Real Estate Brokers) of £8,125.91. In the light of these premiums the Applicants submitted that it would be reasonable to expect all previous premiums to be below £10,000.

Section 20C Application

63. n application was made by the Applicant 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 Applicant.

64. Neither party addressed the issue of the section 20C applicant in their representations.

Determination

65. The Tribunal considered the evidence and submissions of the parties.

66. The Tribunal considered the cases to which it had been referred by both the parties in chronological order.

67. The case of *Havenridge Limted v Boston Dyers Limited* [1994] 49 EG 111 [hereafter *Haveridge*] concerned commercial leases and section 19 of the Landlord and Tenant Act 1985 had no application. The terms of the lease were of particular importance and reasonableness was held not to be an issue. For the purposes of these proceedings the case is authority a) for the landlord not having to obtain the cheapest premium and b) it being sufficient that the landlord obtains a premium that is representative of the market rate or that it has been negotiated at arms' length in the market place.

68. The case of *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* [1996] EWHC Admin 50 confirms for the purposes of residential leases the decision in *Havenridge* that provided the premium is not excessive and has been negotiated in ordinary course of business it will be found to have been reasonably incurred.

69. The case of *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173 [hereafter *Forcelux*] is for these proceedings, authority for the submission that the Respondent is entitled, as a commercial landlord with a very substantial portfolio, to negotiate a 'block policy' for all the Landlord's holdings rather than negotiating individual policies property by property. It was and is here submitted by the Landlord that there are advantages of practicality for the Landlord and more comprehensive cover for the Tenant.

70. In addition, in *Forcelux*, the Tribunal stated that the issue to be determined was whether the premium was "reasonably incurred". In making the determination the Tribunal identified at paragraphs [39] and [40], two questions to be addressed. First, whether the Landlord's actions were appropriate i.e. whether the proper procedure had been followed as mentioned above. Second, whether the amount charged was reasonable considering the evidence in answering the first question.

71. It was said that this latter question was "particularly important" because otherwise "it would be open to any landlord to plead justification for any particular figure…without properly testing the market".

72. In *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 0264 (LC) the above decisions were confirmed.

73. The Tribunal also considered the more recent case of *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC) [hereinafter *Cos Services*]. In that case His Honour Judge Bridge referred to *Waaler v Houslow LBC* [2017] EWCA Civ 45 in which the Court of Appeal referred to *Forcelux* paragraphs [39] and [40] and commented at [33]:
"It is true that the member considered the landlord's decision-making process. But the important point is that he did not stop there. He also tested the outcome by reference to what the cost of the cover was on the market. In other words, the landlord's decision-making process is not the only touchstone. The outcome was also "particularly important".

74. Having considered these cases, the Tribunal identified the following principles.

75. Firstly, a landlord is entitled to obtain insurance on a portfolio basis. In doing so the premium paid in respect of a property within that portfolio need not be cheaper merely because it is a 'block policy'. The advantage of the block policy is primarily to a commercial landlord in obtaining insurance for a number and range of properties. There may be an advantage to the payers of the premium such as tenants, in that the economy of scale may enable the premium to be less or the policy may cover more risks comprehensively than if the properties were insured individually. That same economy of scale may also allow the insurer to maintain a lower premium because the costs of claims can, so far as the insurer's risk is concerned, be balanced between properties within the portfolio. Some will be high risk, others lower, but because they are, as far as the insurer is concerned, in a block, then the overall premium can be competitive.

76. However, that relates to the overall premium. The Tribunal would add to this that, in its view, so far as the apportionment between individual properties and their tenants within the portfolio is concerned, the block policy should not mean that the premium is apportioned in such a way that tenants of high risk properties pay less and tenants of low risk properties pay more than if the premium were apportioned to take account of the relative risk of the respective properties. In other words, the Applicants should pay a premium that reflects the risk related to the Property.

77. Secondly, the landlord must obtain its policy acting in the normal or ordinary course of business. This is the decision-making process by which the landlord or its broker must be able to identify the appropriate cover with reference to any provisions of the lease, evaluate policies, assessing their relative coverage against the premiums and decide on the most appropriate policy. Provided the premium is not excessive and has been negotiated in the ordinary course of business at arm's length, it will be found to have been reasonably incurred.

78. Thirdly, the landlord must ensure that the decision-making process has produced an outcome by reference to what the cost of the cover was on the market i.e. it must not be excessive.

79. With regard to evidence adduced by the Respondent the Tribunal finds that the policies in issue are block policies, that they are obtained through a broker, Lockton, and that they appear to be negotiated in the ordinary course of business and at arm's length. The basis for this being that the policies are not with the same company every year. The certificates show that in 2010 the policy was with Brit Insurance and in 2011, 2012, 2013, 2014 with Covea Insurance and in 2016 to the present time, with Axa Insurance. There has been no evidence to suggest that Lockton is associated with the landlord therefore the insurance has been obtained at arm's length.

80. In addition, Lockton's have in their letter dated 13th January 2017 identified the companies they had approached from their panel of insurers in a benchmarking exercise as: Amlin, Aviva and QBE. These companies could offer no better cover than AXA for the portfolio for the 2016 to 2017 renewal.

81. Although evidence has not been produced to show that Lockton has conducted this exercise every year, on the balance of probabilities it has done so as an FCS regulated company.

82. The Tribunal therefore finds that the Respondent has conducted an appropriate decision-making process.

83. Given this, the Applicants submission is that the outcome to the decision-making process is not reasonable because the premium in respect of their Property is excessive. They refer to the statement by the First-tier Tribunal Judge in CAM/22UD/LSC/2017/0060 that the reasons for this are that landlords or their brokers do not negotiate strongly enough, that high risk properties in a block insurance place an unfair burden on the low risk tenants or that premiums are burdened with commissions.

84. The Tribunal considered the premiums for the years in issue and the evidence adduced to support the Applicants' submission.

85. Firstly, the Applicants submitted that the percentage year on year increases in premium between 2007/08 and 2011/12 were 4 to 5% and yet those from 2012/13 to 2016/17 increased at a rate of 12 to 14% with a particularly high increase from 2013/2014 to 2014/15 of 18.95%. The Applicants say that there is no apparent reason for this marked increase.

86. Secondly, the Applicants add that the reason for the increase given by the Respondent being the high claims history, is not justified on analysis. The Applicants refer to the year 2012 to 2013 when the premium rose by 12.38% and yet the past 3 years claims aggregated £86,735.30 as compared with the year 2016 to 2016 when the premium rose by 13.60% when the cost of the claims had dropped to £15,548.00.

87. Thirdly, the Applicants state that they were able to obtain a competitive quotation from NIG for £11,668.79 for the year 2017 to 2018 compared with the premium obtained by the Respondent of £35,431.00. Also, they were able to obtain a competitive quotation from NIG of £7,634.59 and another from AXA

(obtained by Willis Real Estate Brokers) of £8,125.91 for the years 2018 to 2019 compared with that obtained by the Respondents of £24,520.00.

88. Fourthly, the Applicants contend that not only were their quotations lower but when provided with this information the Respondent was able to obtain significantly reduced quotations for both 2017 to 2018 and 2018 to 2019. The reductions being £12,387.00 and £10,264.81 respectively.

89. Fifthly the Applicants submit that the Respondents raise unreasonable objections to alternative quotations and are less than transparent in the information that is provided as to how their quotations are obtained.

90. Overall it is submitted that the premiums should be below £10,000 for all the years put in issue by the Applicants.

91. With regard to the first submission, although the Tribunal appreciates that it is difficult to obtain retrospective quotations for the period 2012/13 to 2016/17. Nevertheless, given that the Tribunal found that the Respondent obtained the cover on the open market in the ordinary course of business and at arms' length, the Applicants need more than percentage increases to show that the premiums were excessive and not reflective of the market. Additional evidence is needed to support their contention from expert witnesses such as brokers or other persons in the insurance industry, premium data or articles as to risk and premium.

92. In addition, in respect of the second submission that the claims history is not reflected in the premiums, the point is not as demonstrative as the Applicant suggests for the years 2012 to 2013, 2013 to 2014 and 2014 to 2015. For these years the Property was carrying three years claims history of over £86,000. It was therefore not unreasonable that the premium increased year on year. Also, these premiums are too historic to determine whether they are reasonable without alternative quotations or expert evidence or premium data.

93. With regard to the premium for 2015 to 2016 and 2016 to 2017 the Applicants submit that the claims history for the previous three years is down to £21,919.84 and £15,548.84 respectively and that therefore the premium should reduce. From the Applicant's table the percentage increase on the previous year's premium for 2015 to 2016 is reduced from 18.95% to 12.57% which indicates that the Property is considered a better risk. However, for these years also, the Applicants have not adduced evidence of alternative quotations or expert evidence or premium data.

94. The Tribunal therefore determined that there is insufficient evidence to support the Applicants claim that the premiums are unreasonable.

95. Finally, for these years no evidence was adduced to show that the premiums were not paid or that they were challenged or objected to, unlike for the years 2017 to 2018 and 2018 to 2019, where there is substantial evidence to show that the Applicants not only questioned the premiums but obtained alternative quotations in an attempt to negotiate their reduction.

96. Therefore, even if there were more evidence with regard to the reasonableness of the premiums the Tribunal finds that in accordance with section 27A(4)(a) the premiums have been agreed or admitted by the Tenants.

97. The Applicants submissions in respect of 2017 to 2018 and 2018 to 2019 are more persuasive. The claims history reduces significantly but this is not reflected in the premiums. In addition, the Applicants have provided alternative quotations for 2017 to 2018 and 2018 to 2019.

98. The Tribunal noted the alternative quotations. The NIG quotation for 2017 to 2018 was £11,668.79 which together with the Angel quotation of £536.42 for terrorism totalled £12,205.21. The quotation recommended by Daines Kapp was from NIG of £7,634.59. Daines Kapp also stated that they had obtained another quotation from AXA (obtained by Willis Real Estate Brokers) of £8,125.91. Other conditional quotations were provided as follows: Covea Insurance plc of indicative quotation) £9,520.00, Aegeas Insurance Limited (quote to be reviewed by underwriter) of £9,063.10 and Liverpool Victoria Insurance Company Limited of £19,752.47.

99. In response to the alternative quotations for 2017 to 2018 the Respondent returned to Axa who reduced their initial premium of £35,431.00 to £23,044.80. In response to the alternative quotations for 2018 to 2019 Axa after some negotiation reduced its initial premium for the Property of £24,520.00 to £14,255.19.

100. The Tribunal firstly considered the most recent alternative quotations and compared them with the reduced Axa quotation. The Tribunal found that there were a number of alternative quotations that had been obtained by Daines Kapp from £7,634.59 submitted by NIG and £8,125.91 from AXA obtained by Willis Real Estate Brokers and £19,752.47 from Liverpool Victoria Insurance Company Limited. More information would be needed as to why the Axa quotation obtained by Willis is less than the Axa quotation obtained by Lockton before it could be relied upon. Also, on looking at the list of companies that were approached by Daines Kapp several, including QBE, Allianz, Zurich, Royal & Sun Alliance and Aviva did not quote indicating that the Property may not be as attractive as the Applicant's beleive.

101. Axa's reduced quotation was £14, 255.19 which although not the cheapest is within the range of quotations obtained by Daines Kapp and has the advantage of being part of the block policy. The Tribunal therefore determined the reduced Axa quotation of £14,255.19 to be reasonable for the year 2018 to 2019.

102. Secondly, the Tribunal considered the alternative quotations from NIG and Angel for 2017 to 2018 which totalled £12,205.21. Taking into account the premium that was negotiated with Axa for the year 2018 to 2019 of £14,255.19 the Tribunal determined that a premium of £12,205.21 is in line with it and could have been similarly negotiated with Axa for 2017 to 2018. The Tribunal therefore determined a premium of £12,205.21 to be reasonable for the year 2017 to 2018.

103. The Applicants submit in passing that the insurance administration charge of £19.99 is unreasonable as it was in addition to the 15% commission received by the Regis Group. They submitted that there appeared to be double charging.

104. The Tribunal considered the work carried out for which the Regis Group received a 15% commission and the Respondent received an administrative charge. The Tribunal found that both charges were for work which was commonly undertaken or arranged by the Managing Agent for a property the cost of which would appear in the service or maintenance charge. The Application only related to the insurance for the years in issue. Therefore, if a tenant considered that certain costs of the maintenance charge were unreasonable, because of the work carried out by Regis Group or the Respondent, then this would be a separate issue and possible application.

105. The Tribunal determines that the following insurance premiums to be payable:
1st July 2011 to 30th June 2012 of £16,039.66
1st July 2012 to 30th June 2013 of £18,024.28
1st July 2013 to 30th June 2014 of £20, 709.34
1st July 2014 to 30th June 2015 of £24,634.37
1st July 2015 to 30th June 2016 of £27,730.92
1st July 2016 to 30th June 2017 of £31,500.00
1st July 2017 to 30th June 2018 of £12,205.21
1st July 2018 to 30th June 2019 of £14,255.19

Section 20C Application

106. In deciding whether or not it is just and equitable in the circumstances to grant an order under section 20C the Tribunal considered the conduct of the parties and the outcome of the proceedings.

107. It was understandable for the Applicants to challenge the year on year increase of the insurance premiums. However, given that the decision process had been conducted correctly, it was for the Applicants to show that the outcome was that the premiums were, nevertheless, excessive. If they were excessive then the Applicant had left their questioning of the premiums for the years in issue too late to obtain relevant alternative quotations, or they needed to adduce expert evidence or data. It is not enough to show that the premium for one year was excessive and then extrapolate back for the past six years.

108. In addition, the Applicants appeared to have agreed the premiums for the years 2011 to 2012 until 2016 to 2017. Although it was submitted that a reason for not questioning the premiums earlier was in part due to the lack of social cohesion of tenants to collectively challenge the charges, nevertheless any one tenant could have made an application on his or her own account.

109. The result is that the Applicants have had very limited success in their application and therefore the Tribunal finds it just and equitable not to make an order under section 20C of the Landlord and Tenant Act 1985.

Judge JR Morris

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

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

111. 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 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 period

112. 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.

113. 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.