FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/11UF/LSC/2021/0033**
Property	:	**1-12 Blamoral Court , High Wycombe and 26 other flats on the same estate.**
Applicant	:	**Firstgate Resident Management Ltd**
Representative	:	**Mr Critchley**
Respondent	:	**Sinclair Gardens Investments (Kensington) Limited**
Representative	:	**Mr Bottomley**
Type of Application	:	**Application for a determination pursuant to s 27A of the Landlord and Tenant Act 1985.**
Tribunal Members	:	**Judge Shepherd** **Mr D Barnden FRICS**
Date of Decision	:	**6 December 2021**

1. In this case the Applicant is seeking a determination of the reasonableness of service charges pursuant to section 27 A Landlord and Tenant Act 1985. The Applicant is Firstgate Residents Management Ltd who are the management company set up to manage premises on behalf of the leasehold owners at a 38 unit development in High Wycombe ("The premises"). The shareholders of

Firstgate are exclusively the lessees of the 38 flats and as such are in complete control of the actions of the company. The Respondents are the freeholders of The premises. The Applicant's challenge concerns insurance cover for the premises. The Applicant itself obtained insurance cover for a premium of £4950.47 p. Pursuant to the leases of the leasehold owners the Respondents required the applicant to insure the premises through a different insurer at a substantially higher premium-£10,843.45 p. Accordingly the Applicant argues that the premium specified by the Respondent's chosen company is excessive or unreasonable.

2. The insurance company specified by the Respondent is Eclesiastical Insurance Office. It is argued by the Applicant that this company is intimately related with the Respondent and any agreement in relation to insurance cover has not been arrived at at arms length. For the reasons that follow the Tribunal did not need to explore this matter further.

The lease

3. The lease is a tripartite lease involving the management company (The Applicant) the freeholder (The Respondent) and the leaseholders. Under the lease the leaseholder covenants both with the Respondent and the Applicant in relation to various matters. It is open therefore for the Applicant itself to enforce the terms of the lease against individual leaseholders. This makes the current application somewhat unusual because the Applicant is in effect acting on behalf of the leaseholders against the Respondent rather than seeking to enforce the terms of the lease against the leaseholders.

4. Part 4 of the schedule to the lease contains the relevant insurance provision. This states the following:

The company shall at all times during the said term (unless such insurance shall be vitiated by any act or neglect of the lessee) insure and keep insured the flats in the names of the lessor and the lessee his mortgagees (according to their respective respective estates and interest) and the company against the usual comprehensive risks with some insurance company of repute nominated by the lessor and through the agency of the lessor….

5. Accordingly it is for the Applicant to insure the building but through a company nominated by the Respondent. At the same time the leaseholder covenants to pay the Applicant a proportionate part of the costs incurred by them including the cost of insurance. Pausing here it is clear therefore that aside of dictating the insurance company that should be used the Respondent is not involved in the insurance transaction. The real problem for the Applicant in this case therefore is that the Respondent should not be a party to these proceedings. In fact, the parties should be the Applicant and the leaseholders. In a tripartite lease like this one they are the parties under focus in any application made pursuant to s.27A of the Act.

6. The Tribunal had previously expressed some concern about the application and this was reflected in directions given by Judge Wyatt on 17 August 2021 in which he refused an application to strike out made by the Respondent but advised the Applicant to get independent legal advice as to whether to withdraw or pursue the application on the basis that there was a risk the Tribunal decides that it can't make a meaningful determination. Mr Critchley who appeared on behalf of the applicant said that he had not been able to obtain legal advice from a solicitor but had sought advice from a leasehold advisory service who had told him that his application pursuant to section 27A was valid.

7. Reluctantly the Tribunal have come to the view that this application must be dismissed because the freeholder is not the correct Respondent party as outlined above. Following on from this one must question how does the Applicant challenge what they perceive to be excessive insurance costs in the

Tribunal if they can't do it under s.27A? The answer appears to lie in paragraph 8 of schedule 1 to the Landlord and Tenant Act 1985. That provision allows a tenant or indeed a landlord to apply to the Tribunal for a determination in a case in which the lease requires the tenant to insure the dwelling with an insurer nominated or approved by the landlord. Here the lease requires the management company to insure the dwelling with an insurer nominated or approved by the landlord. Mr Bottomley on behalf of the Respondent accepted that paragraph 8 must also apply in the present circumstances to the management company as well as the tenant. The provision allows the Applicant to seek a determination as to whether the premiums payable in respect of any insurance are excessive. This would appear to be exactly the remedy that the Applicant seeks. Faced with one of these applications the Tribunal has the power to order the freeholder to use a different insurance company.

8. The Tribunal has some concerns about the disparity between the premiums incurred by the Applicant currently and those sought by the company nominated by the landlord. This matter will need to be explored if and when a new application is brought by the Applicant under the correct provision which has just been highlighted.

9. The Tribunal was heartened by the fact that both parties are apparently willing to explore settlement of the case. The dismissal of the application provides some breathing space for them to do so. If they are unable to reach a resolution and a new application is made under paragraph 8 it would be sensible for the present Tribunal to hear that application because we have already seen and read the documents involved in the case.

10. In summary the application is dismissed.

Judge Shepherd

6th December 2021

ANNEX 1 - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.