



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

Case Reference : **MAN/ 00CY/LSC/2021/0030**

Property : **Apartment 81, The Silk Mill, Dewsbury
Road, Elland, Halifax HX5 9AR**

Applicant : **Andrew James Lund and Nigel Lynton
Pickles**

Representative :

Respondents : **RMB 102 Limited**

Type of Application : **Landlord and Tenant Act 1985 –s27A
Service charges & s 20C
Commonhold and Leasehold Reform
Act 2002-Schedule 11(5)(a)**

Tribunal Members : **Judge J. E. Oliver
Tribunal Member P. Mountain**

**Date of
Determination** : **14th January 2022**

Date of Decision : **27th January 2022**

DECISION

Decision

1. The amount payable for the insurance of the Property for the year 2021-2022, in the sum of £1616.84 is reasonable and payable by the Applicants.
2. There is no order made pursuant to section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Application

3. This is an application by Andrew James Lund and Nigel Lynton Pickles (“the Applicants”) for the determination of the liability to pay and the reasonableness of the service charges, pursuant to Section 27A of the Landlord & Tenant Act 1985 (“the 1985 Act”), in respect of Apartment 81, The Silk Mill, Dewsbury Road, Elland (“the Property”) for the year 2021-2022. The issues are limited to buildings insurance and associated charges
4. There are two further applications, the first being one for an order preventing the costs incurred in connection with the proceedings being recovered as part of the service charge, pursuant to section 20C of the 1985 Act. The second is for an order reducing or extinguishing the Applicants’ liability to pay a particular administration charge in respect of costs incurred within the proceedings, pursuant to Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).
5. The Respondent to the application is RMB 102 Limited, the management company for the Property (“the Respondent”).
6. Directions in respect of the application were issued on 23rd September 2021, providing for the matter to be dealt without either an inspection of the Property or a hearing.
7. The parties confirmed to the Tribunal they were agreed the application should be determined on paper and without an inspection. The matter was listed for determination on 14th January 2022.
8. The Tribunal was advised the Applicants had previously made an application to the Tribunal in respect of the Property relating to insurance premiums and that matter was dealt with on 4th October 2017 under reference MAN/00CY/LSC/2017/0043 (“the 2017 decision”) to which reference will be made in this decision.

Background/Issue

9. The Applicants challenged the amount charged for the insurance of the Property and that there had been a failure by the Respondent to provide adequate information relating to it. The annual premium had increased from £475.21 for the year 2020-21 to £1616.84 for the 2021-2022.

The Lease

10. The Tribunal was provided with a copy of the Lease for the Property dated 14th November 2008 and made between City Services Limited (1) Silk Mill Management Company (2) and Andrew Lund and Nigel Pickles (3) ('the Lease).
11. The Lease is for a term of 999 years from 1st January 2007 subject to the payment of an annual ground rent of £250.
12. Clause 5.1 of the Lease provides for the Landlord "to insure the Estate".
13. Clause 5.2 further provides:

"Insurance is to be effected in such substantial and reputable insurance office, or with such underwriters, and through such agency as the Landlord from time to time decides in the following amounts:

5.2.1 -the sum that the Landlord is from time to time professionally advised is the full cost of rebuilding and reinstating the Estate;

5.2.2-tloss of Ground Rent and Service Charge income from the Estate;

5.2.3-inrespect of public property owners and third party liability for the Estate".

14. Clause 5.2.3 provides:

"Insurance must be effected against damage or destruction by any of the Insured Risks to the extent that such insurance may ordinarily be arranged with a substantial and reputable insurer for developments such as the Estate"

15. Clause 5.2.4 contains the Tenant's covenant to pay the Insurance Rent as defined in Clause 1.11:

"-the Insurance Rent means the Insurance Rent Percentage of the gross sums including any commission that the Landlord is from time to time liable to pay"

The Law

16. Section 27A(1) of the 1985 Act provides:

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,
(e) the manner in which it is payable.

17. The meaning of the expression “service charge” is contained within section 18(1) of the Act as follows:
- “..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 cost of management, and*
- (b) The whole or part of which varies or may vary according to the relevant costs.*
18. When making a determination under section 27 of the Act, the Tribunal must have regard to section 19 which provides:
- (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 of 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.*
19. Section 18(2) contains the definition of “relevant costs” as:
- “the costs or estimated costs incurred or to be incurred by or on behalf of a landlord, or a superior landlord, in connection with the matters for which the service charge is payable.’*

Submissions

20. In their statement to the Tribunal, the Applicants confirmed their issue was the amount charged for Buildings Insurance from 25th March 2021 to 24th March 2022. In the year 20/21, the premium for the Property had been £475.21, but this had increased to the sum of £1616.84 for the following year.
21. The Applicants stated that, as a consequence of the rise in the premium, the freeholder was due to a commission of £20,527.32. It was not known what amount was paid by way of commission to the broker.
22. The Applicants confirmed they were aware of an issue regarding cladding at The Silk Mill (“the Building”) of which the Property is part

- and that the cost of any remedial work was under review, including the availability of a government grant.
23. The Applicants submitted the Respondent had failed to “to provide disclosure of alternative policy providers or quotes after repeated requests, stating the “Freeholder’s portfolio is insured as a whole”.
 24. There was said to be a conflict of interest regarding where the insurance policy was placed and the commission received that was to the detriment of the Applicants.
 25. The Respondent provided the Tribunal with details of the steps taken to insure the development. In procuring insurance the Respondent used the services of a broker, Arthur J Gallagher (UK) Ltd (“AJG”) who used E & J Capital Partners Limited (“EJCP”) as their representative.
 26. It was explained the Building is rated B2 on the EWSI system, meaning the fire risk requires remedial work to be carried out. The Building is an old converted mill to which 3 additional storeys have been added. Those storeys are clad but this is not in accordance with the current guidance, such that it will need to be replaced and vertical barriers installed. Further, on those storeys, timber balconies are in place, which also fail current safety standards and will need to be replaced.
 27. The Respondent advised that six months prior to the insurance renewal date AJG went to the insurance market to obtain renewal quotes. This was done for the Building alone and also for the Respondent’s portfolio as a whole. They confirmed that 16 companies were approached as were Lloyd’s, Europe and Bermudian insurers and reinsurance markets. All declined to quote both for the Respondent’s portfolio and its larger sites, including the Building. EJCP retained another major broker, Lockton International to provide a second opinion and they confirmed only very limited options were available.
 28. Upon the basis no alternative insurance could be secured, it was said:

“Generally in the current market, a large broker will get a large portfolio or an individual higher risk building renewed with the existing insurer, albeit at a price. Attracting alternatives is highly challenging. Ultimately, AJG used its market leverage to get Zurich to commit, but it is a seller’s market. Zurich only renewed because it arranged a large reinsurance programme to reduce its net exposure on larger, higher risk/value buildings.”
 29. The significant increase in the insurance premium was due, in part, to the 5.7% indexation of the declared value, this increasing the value from £24,848.867 to £26,265,252. The other reason was that any properties with timber cladding and having a value above £100,000 incurred a 230% rate increase upon renewal. It was advised the Applicants insurance premiums were £1598.55 and £18.29 being 0.787861% of the Buildings Insurance premium of £203,154.69 and 0.786861% of the Terrorism Insurance premium of £2,323.94 respectively.
 30. The Respondent confirmed the commission of 12.89% of the premium, excluding IPT was disclosed to the Applicants. Of this 9.99% was received by EJCP and the balance of 2.9% by AJG. It was argued this was a reasonable sum, reflecting the services provided for insuring the

Building. Commission forms part of the Insurance Rent under the terms of the Lease and is payable by the Applicants.

Determination

31. When considering the issues raised in the application, the Tribunal had regard to the decision made on 4th October 2017 (MAN/00CY/LSC/2017/0043). Whilst this decision is not binding upon this Tribunal it includes matters that are relevant to the current application.
32. It is noted that in this application, the issue is limited to the reasonableness of the insurance premium and associated charges.
33. In the 2017 decision, the application related to the amounts payable for the insurance costs of the Building. Whilst the issues were not identical to this application, reference was made in the decision that pertain to the matter raised here. In particular, it was determined the insurance premiums are payable as part of the service charge. It was also determined the steps taken by the Respondent, at that time, to procure insurance for the Building were reasonable.
34. The Tribunal referred to ***Havenridge Ltd v Boston Dyers Ltd [1994] 2 EGLR 73*** and ***Berrycroft Management Co Ltd and others v Sinclair Gardens Investments(Kensington Ltd [1997] 1 EGLR 47***. Its conclusion following from those decisions was as follows:

“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 insurers might have charged. Nor is it necessary for the landlord to approach more than 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 that kind then, in my judgement, the landlord is entitled to succeed. The safeguard for the tenant is that, if the rate appears high in comparison with other rates that are available in the insurance markets at the time, 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.”

35. This Tribunal agrees with this finding. Here, the Respondent began a review of the insurance market six months prior to the renewal date. The Brokers approached 16 companies to obtain alternative quotes and all refused to do so. Further steps were then taken, but which left the Respondent with no other viable alternative than to remain with the same company and on the terms demanded by it. The insurance is effected with a reputable insurance company, Zurich. The Tribunal does not see what other steps could have been taken given the market and the specific defects of the Building.

36. Whilst the Applicants have challenged the reasonableness of the insurance premiums, no comparative quotes have been given to the Tribunal to show that cheaper insurance, on the same terms, could have been obtained elsewhere. The Applicants have taken issue with the substantial increase in the premium payable but have failed to show the amount demanded is unreasonable.
37. The Applicants stated they had asked for details of alternative policy providers and quotes. This was not forthcoming, the Respondent advising the freeholder insured as a whole, but confirmation of the commission at 9.99% was advised. The Tribunal had sight of the exchange of e-mails between the parties. The Tribunal noted the Respondent gave the Applicants the opportunity to obtain their own insurance quotes, should they wish to do so. The Applicants were also referred to the late payments team to discuss payment options.
38. The Tribunal considered whether the information provided had been sufficient. The Tribunal determined that it had. The 2017 decision had notified the Applicants there was no obligation upon the Respondent to seek any more than one insurance quote provided it was from a company of repute and had been secured in the normal course of business. The Respondent had advised the Applicants it had approached 16 other insurers, and none were prepared to offer terms more favourable than the current insurer. The current insurer was of repute. The Respondent was not obliged to do more.
39. The Applicants alleged there was a conflict of interest regarding where the insurance had been placed but the Tribunal did not find any evidence provided to support this.
40. The Applicants further stated the commission charged was to their detriment. The Tribunal noted that in the 2017 decision it had been determined that the Lease allowed for commission to be charged within the insurance premium. Here, the Applicants provided no evidence to show this amount was unreasonable and that a lower commission could have been secured elsewhere.
41. The Tribunal determines the amount payable for the insurance of the Property is payable as part of the service charge and is reasonable. The Applicants have therefore been unsuccessful in their application and the Tribunal therefore does not make any orders pursuant to section 20C of the 1985 Act or Paragraph 5A of Schedule 11 of the 2002 Act.

Tribunal Judge. J. E. Oliver