FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00KF/LSC/2022/0055**
Property	**:**	**103 & 103A Oakleigh Park Drive, Leigh-on-Sea, Essex SS9 1RR**
Applicants	**:**	**Lorna Reeve (103)** **Annette Lesley (103a)**
Represented by	**:**	**Stuart Coe** **Scott & Stapleton**
Respondent	**:**	**Forcelux Limited**
Represented by	**:**	**Christopher Gibb** **JC Gibb & Co**
Application	**:**	**Application, pursuant to s27A of the Landlord & Tenant Act 1985, to determine the liability to pay and reasonableness of service charges and administration charges.**
Tribunal Members	**:**	**Judge Stephen Reeder** **Tribunal member Patricia Gravell**
Date of hearing	**:**	**24 February 2023 convened remotely by CVP platform**
Date of Decision	**:**	**24 February 2023**
Date Written	**:**	**5 March 2023**

DECISION

DECISION

1. The tribunal determines that in relation to the application by Lorna Reeve in respect of 103 Oakleigh Park Drive for the accounting years 2016 to 2020, Ms Reeve had agreed or admitted and paid the service charge in respect of the building insurance costs and so cannot now challenge them in these proceedings.

2. The applicant and tenant of 103A is Annette Lesley. She has been the lessee tenant of her flat since March 2021 and so may and does challenge the service charge in respect of the building insurance costs for the accounting years 2021 and 2022.

3. The tribunal determines that the following sums are payable and reasonable as a service charge in relation to the relevant cost of buildings insurance -

   2016

   £1164.30 apportioned 50/50 to £582.15 per flat.

   2017

   £1209.26 apportioned 50/50 to £604.63 per flat.

   2018

   £1294.20 apportioned 50/50 to £647.10 per flat.

   2019

   £1353.50 apportioned 50/50 to £676.10 per flat.

   2020

   £1410.92 apportioned 50/50 to £705.46 per flat.

   2021

   £1869.36 apportioned 50/50 to £934.68 per flat.

   2022

   £1869.36 apportioned 50/50 to £934.68 per flat.

4. At the hearing Eric Jacob as director of the respondent landlord confirmed that the respondent does not seek to recover the costs of the tribunal proceedings whether as contractual costs under the lease or otherwise. Accordingly, the tribunal did not go on to consider any order pursuant to s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

5. At the hearing the applicants confirmed that they do not seek any order in respect of the issue and hearing fees incurred. Accordingly, the tribunal did not go on to consider any order in respect of the same.

6. No party has made an application for any costs shifting order pursuant to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2017.

REASONS

The application, the property & the parties

7. The application is brought pursuant to s27A of the Landlord & Tenant Act 1985 to determine the liability to pay and the reasonableness of service charges and administration charges demanded in respect of 103 and 103A Oakleigh Park Drive, Leigh-on-Sea, Essex SS9 1RR ('the flats').

8. The properties are two self-contained flats (103 on the ground floor and 103A on the first floor) located in a converted two-storey end of terrace house 103 Oakleigh Park Drive ('the building'). The building was constructed in or about the 1930s. It was converted into the two flats in or about 1994.

9. The application relates to the accounting years 2016-2022 inclusive. It relates to the service charges demanded in respect of the building insurance for each of those accounting years. The total value of the dispute is stated to be £8,690.50.

10. The applicant and tenant of flat 103 is Lorna Reeve. She has been the lessee tenant of her flat for each of the relevant accounting years. The applicant and tenant of 103A is Annette Lesley. She has been the lessee tenant of her flat since March 2021. They are referred to as 'the applicants' in this Decision.

11. The respondent landlord demanding the relevant service charges is Forcelux Limited. It is referred to as 'the respondent' in this Decision.

The procedural history

12. The application is dated September 2022. Judge Hardman made a directions order on 24 October 2022. It was issued to both parties on that date.

13. That order directed the applicants to serve on the respondents a completed version of the annexed 'Scott' schedule, a copy lease, copies of the service charge accounts, any witness statements relied upon, and any alternative quotations relied upon.

14. That order directed the respondent to file and serve its completed version of the annexed 'Scott' schedule, a witness statements addressing liability under the lease and how the disputed charges have been calculated, service charge accounts, supporting documents (including those relevant to market testing).

15. That order gave the applicants permission to file a brief reply to the landlord's evidence and directed the applicants to file an indexed hearing bundle ordered in accordance with the requirements of paragraph 11 and annex 2 of that order.

16. That order directed that any party wishing to rely upon expert evidence must apply to the tribunal for permission to do so. No such application was made.

The hearing

17. The tribunal convened a remote video hearing by CVP (cloud video platform). Neither party requested an attended in-person hearing. Having regard to the issues raised and evidence and information filed on the application, and to the current ongoing Covid-19 related precautions, the tribunal is satisfied that the remote video hearing is an appropriate and proportionate procedure to determine these proceedings. Neither party requested an inspection of the flats or of the building in which they are located. The tribunal is satisfied that an inspection is not necessary in order to determine the issues raised in the application.

18. The matter was heard by remote video CVP hearing on 22 February 2023. The tribunal made its determination on 22 February 2023. The Decision was written on 23 February 2023.

19. The applicants have been represented by Stuart Coe of Messrs Scott & Stapleton. Both applicants have attended the hearing.

20. The respondent has been represented by Christopher Gibb of Messrs JC Gibb & Co. Eric Jacob, director of the respondent company has attended the hearing.

The application

21. The application by Lorna Reeve challenges the service charges for the accounting years 2016 to 2022 inclusive as follows –

2016

£1164.30 buildings insurance cost apportioned 50/50 to demand £582.15 per flat – applicants' proposed cost £270, being £135 per flat.

2017

£1209.26 buildings insurance cost apportioned 50/50 to demand £604.63 per flat – applicants' proposed cost £290, being £145 per flat.

2018

£1294.20 buildings insurance cost apportioned 50/50 to demand £647.10 per flat – applicants' proposed cost £320, being £160 per flat.

2019

£1353.50 buildings insurance cost apportioned 50/50 to demand £676.10 per flat – applicants' proposed cost £346, being £173 per flat.

2020

£1410.92 buildings insurance cost apportioned 50/50 to demand £705.46 per flat – applicants' proposed cost £380, being £190 per flat.

2021

£1869.36 buildings insurance cost apportioned 50/50 to demand £934.68 per flat – applicants' proposed cost £400, being £200 per flat.

2022

£1869.36 building insurance cost apportioned 50/50 to demand £934.68 per flat – applicants' proposed cost £400, being £200 per flat.

22. Annette Lesley took the lease of the 103A on the first floor in March 2021 and so joins the challenge to the service charge in respect of buildings insurance for part of that accounting year and for the accounting year 2022.

23. The total value of the disputed service charges is stated in the application to be £8,690.50.

24. The applicants' liability to pay a service charge to meet the cost of buildings insurance is not in dispute.

25. The apportionment of that cost 50:50 between the applicants is not in dispute.

26. The dispute relates solely to the cost of the buildings insurance.

Preliminary issue – agreed or admitted service charge

27. The application by Lorna Reeve challenges the service charge in respect of buildings insurance for the accounting years 2016 to 2022. She has paid the service charge for each of those years.

28. The respondent's statement of case it raises the issue that there was no challenge to the cost of the buildings insurance "before the Autumn of 2021".

29. During the hearing it was accepted that the earliest indication Ms Reeve gave that the service charge in respect of the buildings insurance was not agreed or admitted was a letter dated 24 February 2021. In that letter she states "….I feel that the service charge is excessive at £900 to cover buildings insurance, accountants fees and other administrative charges…". The tribunal considers that this letter is clear and compelling evidence that Ms Reeve no longer agreed or admitted the costs of the building insurance recharged as service charge.

30. In her evidence Ms Reeve candidly accepted that she only formed the view that the building insurance costs should be challenged when Annette Lesley took the lease of the 103A on the first floor in 2021. She states that Ms Lesley "knew more about it" and that [she, Ms Reeve] "became more confident".

31. During the hearing it was checked and confirmed that each of the service charge demands to Ms Reeve was accompanied by the 'Summary of the rights and obligations of tenants of dwellings in relation to service charges' required by section 153 of the Commonhold and Leasehold Reform Act 2002.

32. The tribunal carefully considered the application of section 27A(4) of the Landlord & Tenant Act 1985 which provides that no application may be made in respect of a matter which has been agreed or admitted by the tenant", and of section 27A(5) of the Act which provides "a tenant must not be taken to have agreed or admitted any matter by reason only of having made a payment".

33. The accepted facts are clear. Ms Reeve paid the service charge demanded in respect of the cost of buildings insurance in each of the accounting years challenged. She did so without any objection, reservation or indication that the same was not agreed or admitted until 2021. Indeed, she did not have any effective intention to object until Ms Lesley moved in to the flat above her in 2021 and herself raised the issue of the costs of the buildings insurance.

34. Having regard to the statutory scheme and to the evidence before it, the tribunal determines that for the accounting years 2016 to 2020 Ms Reeve had agreed or admitted and paid the service charge in respect of the building insurance costs and so cannot now challenge them in these proceedings.

35. Given that the single service charge item challenged and basis for that challenge is the same for each of the years it was agreed that the tribunal would reflect this in its decision.

Preliminary issue – admission of late evidence

36. The directions order made by Judge Hardman on 24 October 2022 directed that the landlord serve a statement by 24 November 2022 which sets out, inter alia, "any other matters relied upon by the landlord". That same order directed that any party wishing to rely upon expert evidence must apply to the tribunal for permission to do so. The respondent made no such application.

37. On 15 February 2023 the respondent's representative sent an email to the tribunal office (copied to the applicants' representative) stating "please see attached letter from the respondents' brokers regarding the renewal of 2023. I believe it may assist the tribunal at next week's hearing". The attachment is a letter dated 2 February 2023 from Messrs Clear Insurance Management to the respondent. It relates to policy 24368050CHC (ie. the policy for insurance in this case) which type is described as "property owners various locations". It further states –

> "*The above policy has been renewed with Aviva. Prior to agreeing the terms with Aviva a marketing exercise took place with presentations being sent to Aviva, Burns and Wilcox and Royal & Sun Alliance. The latter did not offer quotations as they could not match or better terms offered by Aviva.*
>
> *Aviva have continued to offer the best terms with regards to premium, service levels and claims handling. They have also continued to offer the reduced excess for subsidence claims in the sum of £500 compared to the market standard of £1000 on all properties excluding Forest House which carries £2500 due to claims."*

38. The respondent seeks permission to rely upon this evidence on the basis that it was not available by the deadline for the respondent's evidence in November 2022 and is filed to assist the tribunal. The applicants do not object to the admission of this letter in evidence and further themselves refer to it (in particular the Forest House subsidence excess) to support their application.

39. In the circumstances the tribunal considers that no substantive or procedural unfairness is caused to the applicants and has determined that the letter is admitted as evidence and is considered by the tribunal for the purposes of determining this application.

The documentary evidence and materials considered

40. The parties provided the tribunal with a main bundle and addendum bundle which together number 334 pages. The tribunal has had careful regard to the documents filed in that bundle. During the hearing the tribunal and the parties have read, discussed, and analysed the key documents.

The leases

41. The tribunal is provided with a copy of the lease in respect of both flats. They are in materially the same form. The lease includes the following provisions of particular relevance to the issues before the tribunal -

- *By clause 1 "…..the tenant….also paying by way of further rent an amount equal to the yearly sum or sums expended by the landlord in insuring the demised premises and the landlord's fixtures and fittings therein against loss or damage by fire and against such risks as the landlord shall think necessary in the full re-instatement value thereof (including architects and surveyors fees demolition and site clearance charges and two years loss of rent) such amount to be paid by the tenant as soon as the said sum or sums have been expended by the landlord"*

- *By clause 3(2) "the tenant hereby covenants with the landlord and with the owners and lessees of the of the other flat comprised in 103 Oakleigh Drive…('the building') that the tenant will at all time hereafter…contribute and pay one half of the costs of the expenses outgoings and other matters mentioned in the Third Schedule hereto".*

- *By clause 4(2) "the landlord hereby covenants with the tenant as follows……that the landlord will at all times during the said term (unless such insurance shall be vitiated by an act or default of the tenant) insure and keep insured the building against loss or damage by aircraft explosion storm tempest or (so far as insurable act or war or accident or by way of other peril within the usual comprehensive policy of such office as the landlord shall from time to time determine at the full value thereof and whenever required produce to the tenant the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the building being damaged or destroyed by any of the said risks as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the same".*

- *By paragraph 3 of the Third Schedule the costs of the expenses outgoings and other matters mentioned in that schedule include "all other expenses (if any) reasonably incurred by the landlord in an about the maintenance and proper and convenient management and running of the building".*

42. In interpreting any lease the tribunal has careful regard to the decision of the Upper Tribunal in *Arnold v Britton [2015] AC 1619* and so directs itself to the natural and ordinary meaning of lease clauses under consideration, the other relevant provisions in the lease, the overall purpose of the clause, the related provisions, the lease as a whole, and further has regard to the facts and circumstances known or assumed by the parties at the time the lease was executed, and to commercial common-sense (disregarding any subjective evidence of any party's intentions).

The law

43. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter 'the LTA 1985') sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

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 is payable.

44. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.

45. Section 19(1) provides that 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 shall be limited accordingly.

46. Section 20C LTA 1985 sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides jurisdiction for the Tribunal to make an order to reduce or extinguish the tenant's' liability to pay an administration charge in respect of litigation costs.

47. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

An application may be made to a leasehold valuation 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.

48. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

The parties' respective cases

The applicants' case

49. The applicants' case is succinctly stated in the Scott Schedule as "being overcharged on the insurance". They do not dispute that they are liable under the lease to pay a service charge in respect of the costs of insuring the building. In their statement of case they challenge whether the charges made provide reasonable value for money and are reasonable on the bases –

    a. The policy purchased includes 'business interruption cover' which is neither necessary nor relevant to this building.
    b. Insurance of the building is purchased as part of a wider block policy which may not provide reasonable value for money due to differing types of buildings being included and due to the claims records of other buildings.
    c. Local insurance broker 'BHK Insurance Services' has been provided with the insurance documentation and states the opinion that the applicants are "being well overcharged" and that a reasonable insurance charge for 2022 would be £460.
    d. Adopting that 2022 figure, a reduction of 75% per year would produce the reasonable charge for that year.
    e. Insurance documents relating to the neighbouring 97 Oakley Park Drive are provided as a comparator.

50. In oral argument the applicants contend that the use of a commercial landlord portfolio buildings insurance policy covering approximately 300 properties will provide positive economies of scale but may also result in a negative effect on the costs to individual low risk properties due to the more complicated nature and/or adverse claims history of other properties in the portfolio. The applicant cited paragraph 12.8 of the RICS Code of Practice which provides that "insuring a landlord's portfolio under one policy and thus effectively spreading the insurers risk….in likely to [cause] a contrary effect on low risk properties within the portfolio, the implication of which [the landlord] should consider carefully".

51. The applicants contend, and the respondent accepts, that 103 Oakleigh Park Drive is a low risk property as an end of terrace house of traditional construction converted into two flats on the ground and first floors respectively with no retained parts, no services from the landlord, a small rear garden and small front area both of which are demised, and no claims history since 2005 when Ms Reeves took her lease.

52. The applicants rely upon comparator evidence and/or open market value for money evidence in a from BHK Insurance Services as follows –

    a. A policy secured from Ageas in respect of the neighbouring 97A/B/C Oakleigh Park Drive for the year commencing 25 October 2022 which produces a gross premium of £553.10 for the building for the year.

    b. A quotation in respect of 103 Oakleigh Drive dated 15 November 2022 which produces a gross premium of £489.22 for the building for the year.

53. This is not adduced or admitted as expert evidence pursuant to the case management and directions order. The tribunal considers it on its face as a documentary comparator. Some leeway has been accorded to Mr Coe to explain how it was obtained, including what information was provided to BHK insurance services. BHK insurance services are a local commercial broker who are used by Scott and Stapleton which is engaged in property sales, letting and management and employs both Annette Lesley and Stuart Coe.

The respondent's case

54. The respondent's case is succinctly and rather opaquely stated in the Scott Schedule as "costs incurred and charged under the terms of the lease". Its statement of case rejects the BHK Insurance/97 Oakley Park Drive 'comparator' relied upon by the applicants on the bases that they do not match the existing terms and conditions of the policy challenged, do not confirm the scope of the cover for the premium they propose, do not take account of the freeholder's claims history, and limits the occupation to lessees and working occupants and "not benefits assisted" which is not comparable to the instant case.

55. The respondent contends "a property owners policy is a practical and efficient way of insuring a portfolio of property…it ensures that a standard of cover and claims handling is consistent and can automatically include the interests or mortgagees and lessees…the insured can be confident that the terms of the policy do not make exclusions for matters beyond its control where it has a contractual requirement to insure".

56. It further contends that it has insured the building in accordance with its obligation to do under the lease and used a broker to ensure that "the best all round terms are achieved".

57. It further cites and relies upon s19(2)(A) of the Landlord & Tenant Act 1985 for the proposition that the tribunal jurisdiction is limited to considering whether relevant costs re-charged are "reasonably incurred" and does not extend to considering the whether the resulting service charge is "reasonable".

58. The Aviva property schedules for the years 2016-2022 [38-49] record that building property damage is insured for the sums between £304,986 (in 2016) to £523,094 (2021), property owners liability for sums between £2,000,000 for any one event (1996) to £5,000,000 for any one event (2021), business interruption for sums between £34,268 (2016) to £36,884 (2021), and terrorism cover for annual premiums of between £24.12 (2016) and £47.44 (2021). The cover provides for an excess of £500 for subsidence, £1,000 for damage caused by an unoccupied property, and £100 for all other contingencies.

59. The bundle contains the rebuilding costs assessment report by Elizabeth James MRICS for the year 2021, being £335,317 excluding VAT.

60. The respondent submits that the BHK insurance services comparator should be rejected as it is not an independent professional comparator because of the existing link between the respondents and the provider.

61. It further submits that it is inappropriate to compare an insurance premium obtained by a commercial landlord portfolio policy with one obtained by lessees in relation to an individual building and cites the decision of the Lands Tribunal (PR Francis FRICS) in *Forcelux Ltd v Sweetman & Parker [LRX/14/2000]* in support of that proposition.

62. It further submits that the policy for 97A/B/C Oakleigh Park Drive is self-evidently for a different building which will raise different risks and issues for an insurer and so is not a comparator. It further submits that it far from clear what information was given to BHK for them to provide the quote in relation to 103 Oakfield Park Drive so that it is not a comparator.

Discussions and determinations

63. Clause 4(2) of the lease places an express obligation on the respondent to insure the building "within the usual comprehensive policy of such office as the landlord shall from time to time determine at the full value thereof". It follows that both the obligation to insure and the process adopted to secure that insurance falls to the respondent landlord.

64. The Aviva property owner policy summary provides a summary narrative description of the cover provided by the policy. That cover is detailed in the full form narrative insurance policy. The respondent contends and the applicant accepts that the cover obtained is appropriate and reasonable. The tribunal concurs.

65. The bundle contains an example of the rebuilding costs assessment reports obtained from Elizabeth James MRICS for the year 2021. The respondent contends and the applicant accepts that such reports are an appropriate means of assessing the rebuilding costs. The tribunal concurs.

66. The Aviva property schedules for the years 2016-2022 clearly record the building value/rebuilding costs for each policy year. Each includes property owner's liability for sums between £2,000,000 for any one event (1996) to £5,000,000 for any one event (2021), business interruption for sums between £34,268 (2016) to £36,884 (2021), and terrorism cover for annual premiums of between £24.12 (2016) and £47.44 (2021). The cover provides for an excess of £500 for subsidence, £1,000 for damage caused by an unoccupied property, and £100 for all other contingencies. The respondent contends and the applicant accepts that the scope of the policy and sums covered for the identified components are an appropriate. The tribunal concurs.

67. The applicants contend that the use of a commercial landlord portfolio buildings insurance policy covering approximately 500 (as was confirmed to be the current portfolio for the most recent policy years) properties will provide positive economies of scale but may also result in a negative effect on the costs to individual low risk properties due to the more complicated nature and/or adverse claims history of other properties in the portfolio. The respondent accepts this and frankly states that it will result in 'swings and roundabouts' for different service charge payers.

68. The tribunal does not accept the respondent's submission that its jurisdiction is limited to considering whether relevant costs re-charged are reasonably incurred and does not extend to considering the whether the resulting service charge is reasonable, nor its reliance on the decision of the Lands Tribunal (PR Francis FRICS) in *Forcelux Ltd v Sweetman & Parker [LRX/14/2000]* and the application of s19(2)(a) of the Landlord & Tenant Act 1985 for that submission. The tribunal considers that the 2001 decision cited does not support the submission made. The tribunal further notes that s19(2)(a) of the 1985 Act was repealed on 30 September 2003 by the Commonhold and Leasehold Reform Act 2002. The respondent is cautioned against routinely citing this authority to the first-tier tribunal without properly addressing its current application.

69. The tribunal does not consider that the respondent landlord's decision to discharge its insuring covenant by the commercial landlord portfolio approach is an unreasonable decision per se, or that it inevitably procedurally results in relevant insurance costs which are not reasonably incurred. However, if there is a persuasive evidential basis to establish that the respondent did not take reasonable steps to test the market and the resulting charge is outside of the reasonable scope

of the market norm then it must be open to the tribunal to determine that the insurance premium charge demanded is not reasonable. The tribunal has therefore carefully considered if there is a persuasive evidential basis by reference to the comparator evidence adduced by the applicants.

70. The respondent has addressed how it seeks to obtain value for money from the market in its statement of case. A specialist broker is engaged to go to market annually. That process is detailed in the letter dated 2 February 2023 from Messrs Clear Insurance Management to the respondent which states "the… policy has been renewed with Aviva….prior to agreeing the terms with Aviva a marketing exercise took place with presentations being sent to Aviva, Burns and Wilcox and Royal & Sun Alliance. The latter did not offer quotations as they could not match or better terms offered by Aviva…..Aviva have continued to offer the best terms with regards to premium, service levels and claims handling". The tribunal considers that, on the evidence before it, the respondent has taken reasonable steps to test the market.

71. Mr Jacob has explained the portfolio disclosed for the purposes of the policy as being 500 properties all of which are residential, the majority of which are converted houses, the largest of which extends to 4 floors, and which properties are geographically spread around the country "from Lincolnshire down to Southport". The claims history is disclosed to obtain the cover. The only claims relate to flooding and subsidence and this is addressed by Aviva making additional charge against affected properties. Mr Jacob stated that the respondent did look at insuring the properties individually some years ago but were advised and continue to be advised to seek portfolio cover by specialist brokers.

72. The applicant's comparator evidence is from Messrs BHK Insurance Services. Stuart Coe has explained in detail how it was obtained. Having regard to the evidence of how it was obtained and to the content of the correspondence related to the same and to the documents provided by BHK, the tribunal rejects the submission made for the respondent that the evidence is vitiated as partial or biased. The tribunal also rejects the submission that this evidence is vitiated as BHK were purporting to act for the respondent. It is clear from the documents that they were not.

73. The tribunal does consider that the evidence is limited in relevance and weight. It is not adduced as expert evidence pursuant to the case management and directions order. It is documentary only. The person who was contacted at BHK to obtain the evidence is John Folger. The person signing the 'quotation' in respect of 103 Oakfield Park Drive is James Humphreys. Neither have provided any written statement. Neither has been available to answer any questions. It follows that the tribunal can only assess the evidence as documentary evidence on its face.

74. The only information provided to BHK was the two-page Aviva policy schedule and a covering email dated 19 August 2022. The email provides the only relevant information on which to base a cover quote. It states that the property is a mid-terrace house converted into two leasehold flats with no claims for 7 years as far as is known. The surrounding narrative refers to overcharging as compared to the cover BHK provide for a three-storey property at 97 Oakleigh Park Drive.

75. The BHK comparator comprises an insurance policy schedule and attached business terms and conditions. It does not provide a narrative policy which identifies clearly the full scope of the cover. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

76. The BHK comparator does not provide for 20% inflation during any re-building or reinstatement period, whereas the Aviva policy does. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

77. The BHK comparator expressly restricts occupiers as "working occupant(s), not benefits assisted" whereas the Aviva policy does not. All parties agreed that such a restriction might lead

to a lower cover quote. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

78. The Aviva policy provides for terrorism cover which is widespread in the industry. The BHK comparator does not. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

79. The Aviva policy provides for an excess of £500 for subsidence rather than what all parties stated to be the 'industry standard' of £1,000. The BHK comparator does not state the subsidence excess and so all have assumed it to be £1,000. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

80. The applicants themselves make the point that only the Aviva policy schedule was provided to BHK and not the full detailed Aviva policy as it was not received until after the BHK evidence was obtained. They candidly accept that "the [BHK] quote might have been different" if BHK has seen the full policy they were being asked to match. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

81. During the hearing it became apparent that Ms Reeve does not herself occupy 103 Oakleigh Park Drive. This is not disclosed in the email dated 19 August 2022. It is suggested, and the tribunal accepts, that if disclosed this may have increased the premium.

82. In the paper application the insurance charge is challenged on the basis that it includes 'business interruption' as irrelevant cover. However, as this results in a premium of £0.01 for each of the accounting years, and so is vanishingly small, this was not pursued at the hearing.

83. The letter dated 2 February 2023 from Messrs Clear Insurance Management to the respondent states "……Aviva have continued to offer the best terms with regards to…..service levels and claims handling. The tribunal considers that this is a relevant and reasonable consideration when deciding how and where to secure insurance cover. There is no evidence before the tribunal as to the service provided by 'Jenston Underwriting Limited' which is the insurer quoted by BHK. The tribunal considers this mitigates against giving comparator weight to the BHK evidence.

84. Having regard to the evidence and information before it the tribunal determines that there is no persuasive evidential basis to establish that the respondent did not take reasonable steps to test the market and that the resulting charge is outside of the reasonable scope of the market norm.

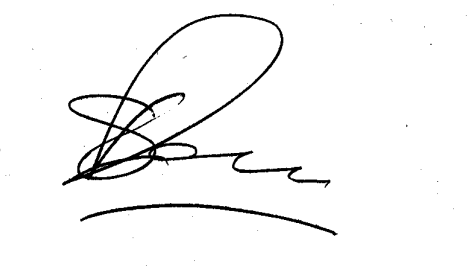
85. The tribunal therefore determines that the service charge demanded in respect of the insurance premiums paid is reasonably incurred and reasonable in sum for each of the accounting years raised in the application.

Fees and Costs

86. At the hearing Eric Jacob as director of the respondent landlord confirmed that the respondent does not seek to recover the costs of the tribunal proceedings whether as contractual costs under the lease or otherwise. Accordingly, the tribunal did not go on to consider any order pursuant to s20C of the Landlord & Tenant Act 1985 and/or paragraph 5A in Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

87. At the hearing the applicants confirmed that they do not seek any order in respect of the issue and hearing fees incurred. Accordingly, the tribunal did not go on to consider any order in respect of the same.

88. No party has made an application for any costs shifting order pursuant to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2017.



Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

5 March 2023

ANNEX - RIGHTS OF APPEAL

a. **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.**

b. **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.**

c. **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.**

d. **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.**