



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

Case Reference : CHI/29UM/LSC/2023/0011

Property : 4 White Satin Close, Iwade, Sittingbourne,
Kent, ME9 8GN

Applicant : Mark Whitfield

Representative :

Respondents : Iwade Meadows (Iwade) Management
Company Limited

Representative :

Type of Application : Liability to pay and reasonableness of service
charges section 27A Landlord and Tenant Act
1985

Tribunal Members : Judge N Jutton

Date of Decision : 6 July 2023
:

DECISION

Summary of the Tribunals Decision

- **The amount payable on account by the Applicant as part of the estimated service charge for the service charge year 2023 in respect of the cost of the insurance premium for insuring the Property is £500**
- **The tribunal declines to make order pursuant to section 20C of the Landlord and Tenant Act 1985. The tribunal also declines to make an order pursuant to Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002.**

Background

1. The Applicant is the lessee of a residential flat known as 4 White Satin Close Iwade Sittingbourne, Kent (No. 4).
2. No 4 is one of four flats (numbers 2 4 6 and 8) arranged in a block (the Property). Under the terms of his lease the Applicant pays a service charge to include the costs incurred by the Respondent for insuring the Property. The Applicant seeks a determination of his liability to pay and the reasonableness of an estimated service charge for the year 1 January to 31 December 2023 in particular in relation to the cost of buildings insurance. The Applicant also seeks orders pursuant to section 20C of the Landlord and Tenant Act 1985 “the 1985 Act”) and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
3. Directions were made by the tribunal on 27 February 2023. They provided that the tribunal considered that the application was suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 and that the tribunal would proceed accordingly unless a party objected in writing to the tribunal within 28 days of the receipt of the directions. No written objections have been received and accordingly the tribunal proceeds to determine the application on the papers alone without a hearing.
4. In accordance with the directions the Applicant has provided a bundle of documents (not paginated) which include the application, a copy of the Applicant’s lease, the directions made by the tribunal, the parties statements of case and correspondence between the parties.

The Law

5. The relevant statutory provisions are to be found in sections 18, 19 and 27A of the 1985 Act. They provide as follows:

18 (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, improvements 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 for 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 or later period.*

19 (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

27A (1) 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, 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 the appropriate 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.*

The Lease

6. There is a copy of the Applicant's lease in the bundle (the bundle is not paginated). It is dated 18 December 2015. The Respondent is named in the lease as the 'management company'. The lease is for a term of 125 years from 1 January 2015. The management company covenants to observe and perform the obligations set out in the sixth and seventh schedules of the lease. By clause 2 of part one of the sixth schedule the management company covenants as follows:
 - (a) *To Insure the Block at all times under a policy or policies providing indemnity to the Landlord and the Management Company and their respective lessees and mortgagees during the Term to their full reinstatement value against loss or damage by fire, lightning, explosion, earthquake, storm or flood water damage, riot, civil commotion, vandalism, theft, subsidence and/or heave and landslip, aircraft, property owners liability, third party liability (including adequate amounts in respect of professional costs) and such other risks (if any) as the Management Company shall from time to time think fit through such agency and/or insurance company as may be instructed by the Landlord and in the event of the Block being damaged or destroyed by any insured risk as soon as reasonably practicable to lay out the insurance monies in the repair or rebuilding or reinstatement of the Block and in the event of the insurance monies be insufficient to make up the deficiency out of its own monies*
7. By clause 3 of the lease the lessee covenants to observe and perform the obligations set out in the fourth and seventh schedules. By clause 16 of the fourth schedule the lessee covenants pay in advance to the management company the 'service charge' in accordance with the provisions of the seventh schedule. The 'service charge' is defined in the lease as 25% of the 'service costs' incurred by the management company. The term 'service costs' is defined to mean the amount of money expended by the management company in respect of the matters set out in part two of the sixth schedule. That includes items of expenditure incurred by the management company in the carrying out of the works and provision of the services specified in part one of the sixth schedule. Accordingly, the costs that the management company incurs in insuring the Property may be recovered by it from the lessee as part of the service charge.
8. The seventh schedule contains covenants on the part of the management company and the lessee in respect of the service charge. It provides for the management company to produce at the beginning of an 'accounting period' (1 January to 31 December) an estimate of the amount that will be required from the lessee in respect of service charge payments for the following year. Further that such an estimate shall whenever possible be based on the actual cost and expense of providing services for the previous accounting period but to include provision for any expected increase in costs for the succeeding period together

with such funds as the management company shall consider reasonable for anticipated future expenditure by way of a reserve fund.

The Applicants Case

9. There is in the bundle a document headed '*Service Charge Apportionment Financial Year 01/01/2023 to 31/12/2023*'. It is understood that this is the budget produced by the Respondent of anticipated expenditure for that year. It includes a figure for buildings insurance of £2000. There is a similar document for the previous year which provides for a figure for insurance of £661 (and also a figure for '*Insurance Reinstatement Valuations*' of £540). As part of his service charge the Applicant is asked to pay 25% of these figures, so a figure of £165.25 for the service charge year 2022 and a figure of £500 for the service charge year 2023. Both are shown as budgeted or estimated items of anticipated expenditure. Actual service charge accounts for the service charge year 2022 are not contained within the bundle.
10. The Applicant questions whether or not the sum of £2000 is a reasonable estimate of the cost of insuring the Property for the 2023 service charge year. He questions why the cost of insurance appears to have risen threefold. He questions an apparent commission payment equating to 22.50% of the insurance premium paid to the Respondents managing agents. He wonders whether the Property was previously under insured or whether there were other 'irregularities' in respect of the provision of buildings insurance which the Respondent was now seeking to 'claw back' by way of an increase in the premium sought for the service charge year 2023. He wonders whether the commission of 22.50% should be credited to the service charge account for the benefit of the leaseholders.
11. Although the estimated budget figure for insurance for the 2022 service charge year was £661 the Applicant understands that the actual premium in the event was during the course of the year reassessed and increased to £1717.81. He surmises that some form of rounding up or uplift has been applied (he would say unreasonably) to achieve the estimated figure for the current year of £2000.
12. The Applicant complains that the increase in the amount of the insurance premium is unexplained. He says that the Respondent has refused to provide information about the reason for the increase. He contends that the Respondent has failed to engage with the lessees with due transparency, accountability and reasonableness.

The Respondents Case

13. The Respondent's case is set out in a form of statement of case made by Michelle Henry of the managing agents company called HML PM Ltd (HML). The Respondent says that in November 2021 it instructed insurance brokers, a company called Fowler Penfold, to obtain insurance quotations. That the Respondent was concerned to ensure that more than one quotation was obtained. That the cheapest quotation for the service charge year 2022 was £661. Subsequently HML commissioned a building reinstatement valuation. That it did so in order to satisfy itself that the amount of insurance cover was

sufficient. The report was from a company called Shaw and Company (Surveyors) Limited. There is a copy in the bundle. It is by Matthew Gawne, a chartered surveyor with that company. It is dated 14th of January 2022. It provided for a reinstatement cost assessment for the Property of £727,400.

14. The Respondent says that in light of that reinstatement valuation the buildings insurance premium for 2022 was reassessed and increased to a total figure of £1717.81. The estimated figure for 2023, the Respondent says, is based upon a 17% increase in that figure. That the Respondent says is a reasonable amount to increase an estimated insured premium for the forthcoming year not least having regard to the number of claims that were made against the insurance policy in 2022. In the event, the Respondent says the actual cost of the insurance premium for 2023 which was received on 6 December 22 was £2157.31. Accordingly, the Respondent says the estimate or budget figure for 2023 demanded from the lessees as part of the service charge of £2000 was a reasonable pre-estimate.
15. There is within the bundle an email dated 17 November 2022 from an insurance broker at a company called A-One Insurance Group addressed to Michelle Henry. That email contains a quotation figure for an insurance premium received from Allianz for the sum of £2197.31. That is stated to be inclusive of insurance premium tax and a £40 administration fee. The figure is also stated to include 22.50% commission. The email also refers to alternative quotes which it is said were obtained from Ageas of £2360.46 and QBE of £3076.23.
16. Accordingly, the Respondent says that the figure for the cost of insurance for the service charge year 2023 contained in the service charge budget of £2000 is a reasonable estimate. That by reference to the actual insurance premium of £1717.81 for the previous year, the actual premium of £2157.31 for 2023 and the alternative quotations obtained by the insurance brokers. That the increase in the amount of insurance premium for both 2022 and 2023 reflects the building reinstatement valuation produced by the surveyor.

The Tribunal's Decision

17. The lease provides that the Respondent is responsible for insuring the Property to its full reinstatement value against the risks set out in clause 2 of part one of the sixth schedule as set out above. The cost thereof can be recovered from the lessees as part of the service charge payable by them.
18. This is an application to determine whether an estimated figure of £2000 for the service charge year 2023 as contained in the service charge budget for that year is reasonable. The Applicant understandably questions that figure not least because the estimated figure for the previous year was only £661 (albeit it transpires that because of the reinstatement valuation carried out in 2022 the actual figure was increased to £1717.81).
19. The tribunal is not told what the estimated or actual figures for insurance were for the years prior to 2022. However, that is not strictly relevant to the issue before it which is whether or not the sum demanded on account for the current service charge year is reasonable.

20. The Respondent has explained, albeit briefly, the process that it undertakes to select an insurance policy. That it instructs insurance brokers to obtain quotations. In the event it says that three quotations were obtained for the current year all of which in the event were higher than the budget figure of £2000. That the figures produced are based upon the updated building reinstatement valuation obtained from the surveyors. That the Respondent had in any event estimated that the insurance premium would increase by reason of claims made during 2022.
21. The tribunal is not provided with details of the proposed terms of the policy but proceeds on the basis that the quotations received from the insurance brokers were on like terms and also on terms which accord with and are consistent with the landlord's insuring covenant in the lease.
22. In all the circumstances, and upon the basis of the evidence before it, the tribunal is satisfied that the sum of £2000 represents a reasonable estimate of the cost that the Respondent will incur for the service charge year 2023 in insuring the Property. That accordingly the amount of estimated service charge payable on account in accordance with the terms of the lease by the Applicant in respect of buildings insurance premium for the service charge year 2023 is £500.
23. The Applicant makes reference to a form of commission which he understands is received by the managing agents. The email dated 17 November 2022 to Michelle Henry from the insurance brokers referred to above states that the insurance premium " *includes 22.50% Buildings commission for you*". It is not clear to the tribunal as to whether or not this "commission" is a form of discount enjoyed by the Respondent/managing agents which has in effect been passed on to the lessees or if it is a form of commission or reward for placing the policy which has not been passed on to the lessees. If it is a form of discount (as in *Williams v Southwark LBC* (2001) 33HLR 22) then the benefit of it should be passed on to the lessees (which it may have been given the wording in the said email that "*The premium quoted includes 22.50% Buildings commission for you*"). If it is form of commission received by the managing agents or by the Respondent but which has not been passed on to the lessees, then upon the basis of the principle that a landlord should not profit through the recovery of service charges then the Respondent should account to the lessees accordingly.
24. The issue of "commission" might be relevant (depending on how it has been treated by the management company/managing agents) in the event that the Applicant or his fellow lessees seek to question whether or not the actual insurance premium incurred for the 2023 service charge year has been reasonably incurred. As stated, the tribunal in this decision is concerned to determine whether or not the sum of £2000 demanded by the Respondent as an estimated or budgeted service charge payment on account is reasonable and for the reasons stated it is so satisfied (notwithstanding how the question of commission/discount may be treated as regards the actual premium charged).

**Section 20C Landlord and Tenant Act 1985 and paragraph 5A
Schedule 11 the Commonhold and Leasehold Reform Act 2002**

25. The Applicant seeks an order that costs incurred by the Respondent in connection with these proceedings should not be recovered by the Respondent as part of any service charge (the Section 20C application). The Applicant also seeks an order that any costs incurred by the Respondent in connection with these proceedings should not be recoverable by the Respondent from him under the terms of his lease as an administration charge (the Para 5A application)..
26. The directions made by the tribunal on 27 February 2023 provided that in the event that this matter was dealt with on the papers without a hearing than the parties should include written representations in respect of both applications in their respective statements of case. In the event neither party has made such representations. In the circumstances the tribunal declines to make an order in respect of both applications.

Rights of Appeal

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