



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

- Case Reference** : CHI/00HE/LDC/2023/0054
- Property** : Various properties of Coastline Housing Limited in Cornwall as set out on the attached list
- Applicant** : Coastline Housing Limited
- Representative** :
- Respondents** : The Lessees set out on the attached list
- Representative** :
- Type of Application** : To dispense with the requirement to consult lessees about a qualifying long term agreement for property insurance, section 20ZA Landlord and Tenant Act 1985
- Tribunal Members** : Judge N Jutton, Mr MJF Donaldson FRICS
- Date and Place of Determination** : 17 November 2023 remotely by Cloud Video Platform

DECISION

Summary of the Decision

The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of a qualifying long term agreement entered into by it with Zürich Municipal for the provision of insurance cover for a three year period expiring on 23 March 2026.

The application and the history of the case

1. The Applicant is the lessor of 433 shared ownership houses and bungalows, 46 shared ownership flats, 4 leasehold houses and 125 leasehold flats and shops in Cornwall (the properties). Under the terms of the lease for each property the Applicant is responsible for arranging buildings insurance. The Applicant does so by arranging a form of block insurance policy. The Applicant has entered into a three year agreement for insurance cover for the properties under the terms of a block insurance policy providing insurance cover with effect from 23 March 2023 (the Agreement). The Agreement is with Zürich Municipal. It is stated to expire on 22 March 2026. The Agreement is a qualifying long term agreement for the purposes of Section 20 of the Landlord and Tenant Act 1985. The Applicants applied for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of the Agreement.
2. The Tribunal gave Directions on 28 September 2023, explaining that the only issue for the Tribunal was whether, or not, it is reasonable to dispense with the statutory consultation requirements (not the question of whether any service charge costs are reasonable or payable).
3. The Directions provided that any party who objected to the application should complete a pro forma which was attached to the same. Objections were received from Georgina Stevens of 28 Soldon Close Padstow PL28 8FS, Naomi Green of 7 College Green Penryn TR10 8FL and Philip Mutton on behalf of Mr D Dooley and Miss S Gowan of 25 Meadow View St. Tudy PL30 3FE.
4. There was before the Tribunal a bundle of documents including the application, Directions made by the Tribunal, the Applicants statement of case, forms of response received from certain lessees and sample leases. References to page numbers in this decision are references to page numbers in that bundle. The Tribunal was also provided with a copy of the Agreement.

5. The hearing was attended by Mr Nathan Mallows and Miss Kirsty Skinner on behalf of the Applicant. There was no attendance by or on behalf of the Respondents.

The Law

6. Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and the related Regulations provide that where a lessor intends to enter into a qualifying long term agreement (an agreement for a term of more than 12 months) with a cost of more than £100 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation “if satisfied that it is reasonable to dispense with the requirements”.
8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14 (albeit that case addresses major works to a property and not a qualifying long term agreement, the same approach applies).
9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to entry into the qualifying long term agreement and if so whether dispensation in respect of that should be granted.
12. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges which have arisen.

13. If dispensation is granted, that may be on terms.

The Applicants Case

14. Under the terms of the various leases of the properties the Applicant is required to arrange insurance cover. The cost of the insurance is recoverable (provided that it is reasonably incurred) from the lessees as a form of service charge. For the three years ending on 23 March 23 insurance cover was provided by a company called Avid through Marsh insurance brokers. That expired on 23 March 2023. The Applicant insures the properties owned by it under the terms of a block insurance policy. Mr Mallows explained that he was advised by the brokers that Avid were looking to exit the market. The Applicant looked for alternative insurers. A potential insurer was found in January/February 2023 which initially was considered to be acceptable. However as the renewal process progressed the cost of the proposed cover escalated (some fourfold) and by early March 2023 the Applicant decided to investigate what other policies might be available on the wider insurance market. Mr Mallows explained that there were only two other major insurers available one of which, Gallagher, decided not quote. That left one major insurance company prepared to provide a quote; Zürich Municipal. Mr Mallows described Zurich as an 'A' Rated insurer. The Applicant says that it considered all insurance options available to it. Zurich were only prepared to provide insurance cover on a three-year agreement basis. In any event Mr Mallows said, given the relatively uncertain insurance market there was an attraction in the certainty of arranging insurance cover for three years. Zürich was also, the Applicant says, the lowest priced option available. Because of the need to ensure that insurance cover was in place for the properties there was insufficient time for the Applicant to carry out a consultation process as required by section 20 of the Act. It therefore proceeded to enter into the Agreement. For those reasons the Applicant seeks (retrospectively) dispensation from those consultation requirements in respect of the Agreement.

The Respondents Case

15. In the bundle were six forms of response received from lessees. (Pages 20–41). Three of the Respondents agreed to the application for dispensation from the consultation requirements. Three did not agree with the application.
16. Miss Georgie Stevens of 28 Soldon Close Padstow stated that she should have been given the opportunity to find her own building insurance cover. She didn't accept that the cover arranged by the Applicant was the cheapest available. That she had found in a short search of the Internet a number of offers of insurance cover for her property for less money. She felt that whatever the decision of the Tribunal she would in effect be paying above the market average without the opportunity to have any say on the matter.

17. Ms Naomi Green of 7 College Green Penryn, objected to the application on the basis that she believed that she had a right to choose her own insurance cover. That she would prefer to arrange her own insurance cover to meet the specific needs that she felt appropriate for her property as opposed to those decided by the Applicant. As she put it: “we do not wish to pay even more for an insurance policy that does not fit our needs”.
18. Mr Philip Martin responded on behalf of Miss Suzanne Gowan and Mr Dermot Dooley of 25 Meadow View St Tudy. He initially sought clarification as to whether or not this application was to seek dispensation in respect of all future consultations on major works or was limited to the Agreement. In a later email he expressed concern at the significant increase in the amount of the insurance premium. He suggested that the Applicant should have insisted that the broker Marsh should have provided a further three months cover to allow time for alternative quotes to be obtained or for the insurance to be restructured into smaller parcels of properties. He stated that if the lessees were permitted to obtain their own insurance cover the amount of premium payable would be reduced.

Decision

19. In March 2023 the Applicant found itself in a difficult position. Insurance cover arranged under a block insurance policy for its properties was due to expire. It was required to arrange new insurance cover. It faced limited options and in particular limited time. The Tribunal is satisfied that was through no fault of the Applicant. It was clearly important that insurance cover was in place. There was insufficient time for the Applicant to undertake the section 20 consultation process (as it had in 2019).
20. The question for the Tribunal is not whether or not insurance premiums are payable under the terms of the various leases held by the Respondents as part of the service charges, or if payable whether such charges are reasonably incurred. The question is whether or not the Respondent lessees were prejudiced or in the future would be prejudiced by the failure to consult. Is it, in all the circumstances reasonable to dispense with the consultation process.
21. There was no evidence before the Tribunal that the Respondents had been prejudiced or may in future suffer prejudice by reason of the failure to consult. It may well be the case, (absent the terms of their lease), that an individual lessee could obtain insurance cover for their property (and just their property) at a lower cost to them (not least when compared to the cost incurred by the Applicant in arranging a block insurance policy to cover all of its properties). However there was no evidence before the Tribunal to show that the failure to consult meant that the Respondents were paying for inappropriate insurance cover or paying more than would be appropriate. Ms Green of 7 College

Green Penryn is wrong to suggest that she has the right to choose her own insurance cover for her property. No doubt, and understandably, she would prefer to be able to do so. However the obligation to provide insurance cover for her property rests with the Applicant/lessor under the terms of her lease. Nor does the Tribunal accept the suggestion made by Mr Mutton that had there been a consultation process the Applicant could have asked the existing insurers to provide a three month extension to allow time to obtain further alternative quotes. There was no evidence that had such a request been made it would have been granted (if anything the representations made by the Applicant suggest to the contrary). There was no evidence that an extension of time would have produced comparable quotes at a lower sum.

22. As the Tribunal made clear in its Directions the only issue which it must determine is whether or not it is reasonable to dispense with the consultation requirements. It is not about the cost of the insurance cover arranged by the Applicant, whether those costs are recoverable from the Respondents as service charges and if so whether such costs are reasonably incurred. (The Respondent lessees have the right to make a separate application to the tribunal under section 27A of the Act to determine the reasonableness of the insurance premiums and the contribution payable through their service charges if they are so minded).
23. In all the circumstances and upon the basis of the evidence before it the Tribunal is satisfied that it is just and equitable to retrospectively grant dispensation to the Applicant in respect of the need to undertake the statutory consultation process in respect of the Agreement.
24. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the Tribunal grants to the Applicant dispensation from the need to consult with the Respondents as required by section 20 of the Act in respect of the qualifying long terms agreement between the Applicant and Zurich Municipal to provide insurance cover for the Applicants properties for a period of three years from 23 March 2023.

Judge N Jutton

17 November 2023

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 to the First-tier Tribunal at rpsouthern@justice.gov.uk being 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

