FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AK/LSC/2024/0191**
Property	**:**	**21, 22, 23, 24, 25, 27 and 29 Florence Drive Enfield EN2 8DG**
Applicants	**:**	**Angela Nicolau (23)** **Desmond Burke (21)** **Shu Yang Janice Chan (29)** **Maroulla Achillea (27)** **Kaye Wildeman (25)** **Dr Stuart Hitch(24)** **Mrs Elizabeth Hitch (24)** **Klara Hugill (29)**
Representative	**:**	**n/a**
Respondent	**:**	**Chancery Lane Investments Ltd**
Representative	**:**	**Mr Paul Simon in- house Solicitor.**
Type of application	**:**	**An application under Section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Tribunal Judge Niamh O'Brien** **Tribunal Member L Crane MCEIH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**21 October 2024**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £410 is recoverable as a service charge in respect of the cost of insurance for each of the subject premises for the year 2024-2025.

(2) The tribunal makes orders under s20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recouping the costs of these proceedings from the Applicants either as a service charge or as an administration charge.

(3) The Respondent must reimburse the application and hearing fees paid by the Applicants within 28 days of this determination.

The Application

1. The First Applicant issued an application dated 7 July 2024 for a determination of in respect of the reasonableness of the service charge levied for the year 2024-2025 for buildings insurance for 23 Florence Drive. Subsequently 5 other leaseholders applied to be joined as applicants in these proceedings and nominated Ms Nicholau as lead applicant. By order dated 23 August 2024 the additional Applicants were joined to the proceedings.

The Proceedings

2. Initially the applicant named the freeholder's managing agent, Morelands Estate Management, as Respondent. Morelands Estate Management applied to strike out the application on the grounds that it was not the correct Respondent. The Tribunal listed the matter for a case management hearing which took place on 23 July 2024. The Tribunal substituted the freeholder as Respondent and gave directions for a paper determination.

3. The Tribunal was provided with an agreed bundle, which had been filed in accordance with the directions, consisting of 686 pages.

The Background.

4. The Applicants are the leasehold owners of 6 self-contained maisonettes situated in adjacent purpose-built blocks in Florence Drive, Enfield, London. Each maisonette in the development has its own street address from 20 to 31 Florence Drive. The development was constructed in the 1950s and according to the documentation in the bundle consists of a total of 12 maisonettes. The Respondent is the freehold owner of 20-31 Florence Drive. On or about 19 February 2024 the Respondent sent the Applicants a demand for payment in respect of buildings and terrorism insurance for the year 2024 to 2025 in the sum of £658.03 per maisonette. Copies of the demands are included in the bundle at pages 594 to 600.

5. The Applicants seek to challenge the reasonableness of the sums they were charged for building insurance. They accept that the charge was recoverable under the terms of their leases and accept that it was reasonably incurred. The Applicants have obtained alternative quotes which they submit indicate that the

charge levied by the Respondent was unreasonably high. They do not take any other issue with the payability of this service charge.

The Insurance Covenants

6. According to the Respondent's statement of case, the leases for 21, 25 and 29 Florence Drive are identical in all matters which are material to this application. Included in the bundle is a copy of the lease for 23 Florence Drive. By clause 2(8) of the lease the lessee covenanted;

> *To keep the demised premises insured at all times throughout the term in the joint names of the lessor and the lessee from loss or damage by fire and such other risks as the lessor shall from time to time deem necessary in such insurance offices as the lesser shall time to time direct and through such agency as the lessor may require in a sum equal to the full value thereof and to make all payments necessary for the above purposes within seven days after the same shall be respectively become payable and to produce the lessor or its agent on demand the policy of such insurance and they received for each such payment and to cause all money received by virtue of any such insurance to be forthwith laid out in rebuilding and reinstating the demised premises and to make good any deficiency out of his of monies PROVIDED ALWAYS that if the lessee shall at any time fail keep the premises insured as aforesaid the lessor may do all things necessary to affect or maintain such insurance and any monies expended for it by that purpose shall be repayable by the lessee on demand and be recoverable forthwith*

7. According to the Respondent's statement of case, the leases of Flats 22. 24 and 27 are subject to a deed of variation which varied the provisions of the lease relating to insurance. The covenants relating to insurance now require these lessees;

> (i). To *keep the demised premises insured at all times throughout the term against loss or damage by fire lightning explosion aircraft earthquake storm tempest flood bursting an overflowing of water pipes tanks and other apparatus subsidence or landslip heave and impact by road vehicles and such other risks as the lessor shall from time to time reasonably require ("The Insured Risks") with insurers nominated by the lesser and through the agency of the lessor for such sum as shall in the opinion of the surveyor for the time being of the less or represent the full replacement cost thereof from time to time (including architects and surveyors fees on such full replacement costs) or such higher sum as the lessee shall require and make all payments necessary for the above purposes within 14 days after the same shall become*

payable and to procure that the interest of the lessor is noted on the policy of such insurance.

(ii). To apply all monies to be received on account of any such insurances as aforesaid in making good from time to time to the reasonable satisfaction of the landlord or loss or damage to the demised premises brought about by an insured risk such as making good to be upon the same plan as before the loss or damage occurred or upon such other plan as shall be first approved in writing by the landlord such approval not to be unreasonably withheld or delayed and if such monies shall prove insufficient for the purpose to complete such making good to the satisfaction aforesaid out of the tenants own money and to pay the landlord on demand and indemnify the landlord against all surveyors fees and other charges and expenses which may be incurred by the landlord in connection with any matter or thing under this or the preceding paragraph of this sub clause and if any dispute shall at any time arise between the tenant and the landlord in connection with such making good as aforesaid the saying shall be referred to the termination of a single arbitrator to be nominated by the president for the time being of the Royal Institute of Chartered Surveyors.

(iii). To produce to the landlords free of cost at any time on demand the before mentioned policies of insurance and the receipts for the current amounts of premium payable in respect thereof provided that in default of the tenant effecting our maintaining such insurance as aforesaid the landlord may without prejudice to the power of re-entry hereinafter contained or to any other right or remedy of the landlord ensure the demised premises in manner aforesaid and pay the said premiums payable in respect thereof and the amounts of all such premiums and all incidental expenses shall be a debt due from the tenant to the landlord on demand.

The Applicants' Case

8. The Applicants' case is set out in the application form and in a series of emails included in the bundle dated 20 August 2024 and 14 October 2024. In accordance with the directions, the Applicants have obtained two quotes dated 7 August 2024 and 19 August 2024 from Marsh Commercial Insurance for buildings insurance in respect of the whole development. The policy is with Arch Insurance, which is also the Respondent's insurance provider. The first quote excludes employers' liability and terrorism cover. The second quote is for £4907.67, or £408.97 per maisonette This quote includes terrorism cover but excludes employers' liability cover. The Applicants have taken issue in particular with the scope of the policy purchased by the Respondent for the year in question. The Applicants submit in particular that they should not have to pay for employers' liability cover as part of their premium.

The Respondent's Case

9. The documents disclosed by the Respondent indicate that the cost of the policies which the Respondent purchased in respect of each maisonette was £658.03 for the year 2024-2025. It included cover for the contents of the common parts and employers' liability cover.

10. In its statement of case the Respondent referred us to the decision of Martin Roger KC Deputy President of the Lands Chamber of the Upper Tribunal in *Atherton v MB Freeholds Ltd [2017] UKUT 0497*. That case concerned a similar, though not identical, covenant which required the leaseholders;

> *"to insure and keep insured the demised premises at all times throughout the term hereby created in the joint names of the lessor and the lessee from loss or damage by fire and such other risks as are included in a tariff companies comprehensive policy in the full insurable value their role with the road transport and general insurance company limited in the agency of the lessor or such other office or agency as the less or shall from time to time approve and to make all payments necessary for the above purposes within seven days after the same… PROVIDED ALWAYS that if the lessee shall at any time fail to keep the demised premises insured as aforesaid the lesser or may do all things necessary to effect or maintain such insurance and any monies expended by the less or for that purpose shall be repayable by the lessee on demand and be recoverable forthwith by action.*

11. The Respondent submits that the quote obtained by the Applicants does not comply with the insurance covenants contained in their respective leases. It submits that, in respect of flats 21, 23, 25 and 29 the lease requires the policy to be in the joint names of the freeholder and the leaseholder and that it be placed through a broker selected by the Respondent. It points out that the quote obtained by the Applicant is in respect of the whole development but that the policies purchased by the Respondent are in respect of each individual maisonette.

12. In *Cos Service Ltd v Nicholson [2017] UKUT 382 (LC)* the Tribunal gave the following guidance as to the correct approach to assessing the reasonableness of the cost of insurance in the context of an application under s27A of the LTA 1985;

- The court or tribunal should consider the terms of the lease and the potential liabilities that are to be insured against;
- It should require the landlord to explain the process by which the particular policy and premium have been selected with reference to the steps taken to assess the current market; and
- What tenant may be able to provide evidence over current if quotations for insurance cover, provided those quotations compare "like for like" in the sense that the risks being covered properly reflect the risks being undertaken pursues the covenants contained in the lease.

13. While the Respondent is correct to submit that the comparator policy does not strictly comply with the requirements of the leases, either in their original form or as varied, that does not mean that it is not a useful comparator for the purposes of s27A of the LTA 1985 for the purposes of assessing the reasonable cost of insurance. There is no evidence that the matters relied on by the Respondent would have had any effect on the premium. In our view the comparator policy obtained by the Applicants is useful because the cover mirrors the scope of the insurance provided for by the leases. The higher quote which includes terrorism cover is the most useful as this generally is within the scope of buildings insurance (*see Qdime Ltd v Bath Building (Swindon) Management Co. Ltd [2014] UKUT 261 (LC).*

14. While the Respondent is not obliged to find the cheapest policy it can on the market, it may only recover the reasonable cost of buildings insurance required by the lease. We note that the cover obtained by the Respondent includes cover for contents insurance for communal parts, public liability insurance and employer's liability insurance. We consider that this cover is wider than the cover provided for by the original insurance covenant which only required the lessees to insure the *demised premises* either from loss or damage by '*fire or such other risks as the lessor shall from time to time deem necessary'*. It is also wider than the insurance which the lessees covenanted to obtain pursuant to the deed of variation in respect of No.s 22, 24 and 27 Florence Drive. The deed of variation obliges the lessees to insure the demised premises against various risks to the fabric of the premises such as fire, escape of water, storm etc. In our view insurance covering the contents of the common parts and employer's liability insurance is wider than that which the lessees covenanted to obtain. Both the original covenant and the deed of variation provide that, in the event that the lessee does not purchase insurance in accordance with the lessee covenants, the lessor is only entitled to recover the cost of '*such*' insurance i.e. the same kind of insurance which the lessee is obliged to purchase. The leases place no obligation on the lessees to purchase employer's liability insurance or contents insurance.

15. In our experience the inclusion of additional risks within the cover afforded by insurance policy will usually increase the premium payable. Consequently we consider that the second quote obtained by the Applicants is a useful guide for the purposes of assessing the reasonable cost of buildings insurance for the subject premises for the year in question. Assuming that the cost is split equally between all 12 maisonettes, the reasonable cost of insurance for the year 2024-2025 for each maisonette would have been £410.

Final Matters

16. The Applicants have applied for an order under s20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act. It is not clear whether such costs would be recoverable as a service charge or an administration charge under the terms of the relevant leases.

17. Section 20C of the LTA 1985 as amended provides:

(1) A tenant may make an application for an order that all or any of the costs incurred or to be encouraged by the landlord in connection with proceedings before the… first tier 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 tenant or any other person or persons specified in the application.
(2) The court or tribunal to which the application is made may make such order in the application as it considers just and equitable in the circumstances.

Paragraph 5A of schedule 11 to the CLRA 2002 provides:

(1) A tenant of a dwelling in England may apply to the relevant court tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers just and equitable.

18. In *The Tenants of Langford Court (Sherbani) v Doren Ltd LRX/37/2000* HH Judge Riche QC set out the principals upon which the s.20C discretion should be exercised:

> 31. *In my judgement the primary consideration that the LVT should keep in mind is the power to make an order under section 20C should only be used in order to ensure that the right claim costs as part of service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not in any event be recoverable by reason of section 19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which is heard the litigation giving rise to the costs can avoid arguments under section 19 but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants, or some particular tenant, should have to pay them.*

19. In *Re SCMLLA (Freehold) Ltd [2014]UKUT 58 (LC)* Martin Roger QC sitting in the Upper tribunal observed:

> *An order under section 20C interferes with the parties' contractual rights and obligations and for that reason or not to be made lightly or as a matter of course but only after considering the consequences of the order for all those affected by it and all other relevant circumstances.*

20. We consider that such an order is justified in the circumstances of this case. The Applicants have succeeded in their application. Further we consider that the decision of the managing agent to apply to strike out the original application, rather than substitute the landlord as Respondent, was unhelpful. Tribunal

considers that it would be unjust if the costs of these proceedings were to be recouped from them either as a service charge or as an administration charge insofar as it is so recoverable under the terms of the relevant leases.

21. At the case management hearing the Tribunal identified the reimbursement of fees as an issue to be determined in this application. As the Applicants have succeeded we consider that it would be right to order the Respondent to reimburse the fees paid by the Applicants within 28 days of this determination pursuant to Rule 13(2) of the Tribunal Procedure Rules 2013.

Name : Judge O'Brien Date 21 October 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).