



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

Case References : **BIR/31UG/LSC/2024/0003**

Property : **1-9 Court House, Norman Road,
Melton Mowbray, LE13 1JE**

Applicant : **Lessees of the Court House**

Representative : **Mr Philip Bourqui, Brunel Property**

Respondent : **G & O Securities**

Representative : **Mr Jan Parteka. Urban Point Management**

Type of Application : **An application under Application under
Ss 27A & 20C Landlord and Tenant Act 1985
And Schedule 11 para 5A Commonhold and
Leasehold Reform Act 2002**

Tribunal : **Judge P.J Ellis.
Tribunal Member Mr I Humphries FRICS**

Date of Hearing : **31 January 2025**

Date of Decision : **03 March 2025**

Decision

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- 1. The Respondent's method of procuring insurance produced insurance premiums which were not reasonable.***
- 2. The Tribunal determines that the sum of £17,748 was overpaid by the Applicants for insurance premiums in years 2019-2022.***

Introduction and Background.

1. This is the second of three separate applications by which the leaseholders of The Court House, Norman Road, Melton Mowbray seek the Tribunal's determination of the reasonableness and payability of service charges pursuant to s27A Landlord and Tenant Act 1985. This case is concerned with insurance premiums paid in service charge years 2019-2022.
2. In summary, the Applicants contend that in service charge years 2019-2022 they paid excessive sums in insurance premiums because the method of procuring insurance used by the Respondent did not ensure value for money nor did it deliver a reasonable premium cost. This element of their claim is £17,748.
3. In addition, the Applicant's claim:
 - a. a refund of £586.00, an excessive charge for a Reinstatement Cost Assessment commissioned by the Respondent in 2020.
 - b. Refund of £2,707.00 insurance premium additional to the principal claim for the insurance policy arranged by the Respondent and cancelled on change of management.
 - c. Compensation for annual contraventions of the terms of the lease for which they claim £1,800.
4. The total value of the claim excluding the claim for compensation is £22,841 as particularised at paragraph 27 below.
5. The Applicants are represented by Mr Philip Bourqui of Brunel Property who was appointed manager of the subject property upon the formation of a Right to Manage Company on 19 April 2023 when the Respondent's appointed agent Urban Point Limited and their sub-agent Blue Property Management ceased their retainer. However, as the issue of payability of the insurance premium concerns the years when Urban Point were the managing agent, the Respondent is represented by Mr Jan Parteka of Urban Point.
6. The application was issued in April 2024. Directions for service of evidence were given on 9 April 2024. The matter was heard by a hybrid video appointment on 31 January 2025 without an inspection. Mr Bourqui and Mr Parteka both relied substantially on their written submissions and evidence supported their oral submissions at the hearing. There was no direct evidence from either side.
7. By this application the Applicant's contend the sums paid by them between 2019 and 2022 are excessive and therefore unreasonable justifying a claim for repayment of the excess.

8. Mr Bourqui's submissions include, in addition to claims for repayment of alleged over payment of insurance premiums, compensatory money orders for breach of landlord's covenants. It was explained to him that the jurisdiction of this tribunal does not extend to making such compensatory orders. The Tribunal's jurisdiction is to determine whether the insurance premiums charged in the relevant years were reasonable and therefore payable.

The Property

9. The property was constructed in the nineteenth century and was formerly used as the magistrates' court. It was converted to residential use in 2014 with some new buildings constructed to provide extra residential accommodation. Part of the building is Grade II listed. A fuller description is at paragraph 6 of the decision in the first case between these parties at *BIR/31UG/LIS/2023/0041-49*.
10. It was acquired by the Respondent when Urban Point were appointed managing agents. They appointed Blue Property Management of Nottingham as their sub agent on 1 January 2019. Blue do not take part in this case. Urban Point also appointed City Gate Insurance brokers to secure insurance for the property.

The Leases

11. The apartments are let on long leases in substantially the same terms. There was no dispute over the terms of the lease. Clauses in the lease relevant to insurance are in Schedule 6 Landlord's obligations. There is no dispute the leaseholders are obliged by the lease to pay as additional rent a prescribed proportion of the costs of insurance procured by the landlord pursuant to Schedule 6, nor is there any dispute over the risks to be insured.
12. Clause 2 of Schedule 6 provides:
 - 2.1. *"To effect and maintain our insurance of the Building against loss or damage caused by any of the insured Risks with reputable insurers on fair and reasonable terms that represent value for money for an amount not less than the Reinstatement Value subject to:*
 - (a) *any exclusions limitations conditions or excesses that may be imposed by the Landlord's insurer; and*
 - (b) *Insurance being available on reasonable terms in the London Insurance market*
 - 2.2. *To serve on the Tenant a notice giving full particulars of the gross cost of the insurance premium payable in respect of the building (after any discount or commission but including IPT). Such notice shall state:*

- (a) the date by which the gross premium is payable to the landlord's insurers; and*
- (b) the Insurance Rent payable by the Tenant how has been calculated and the date on which it is payable.*

2.3. *In relation to any insurance effected by the landlord under this clause the landlord shall:*

- (a) at the request of the Tenant supply the Tenant with:*
 - (i) a copy of the insurance policy and schedule; and*
 - (ii) a copy of the receipt of the current year's premium*

The Parties Submissions

The Applicant

13. The Applicant's case is that the insurance premiums for this property greatly exceeded what was then available from the UK insurance market. Justification for this allegation comes from allegations that the procurement process contravened the obligations imposed on the Respondent by the lease. Further allegations of misconduct in the procurement process are that commission was paid to both the broker, City Gate, and Respondent. Moreover, the commission was excessive and substantially greater than customary. The Applicants did not understand why the Respondent was entitled to a commission in any event. Total commission paid in 2019 63.5% of premium. In 2020 it was 62%. In the years 2021 and 2022 the commission was 44% and 41% respectively. The Applicant submitted commission in the region of 20-22% was closer to market practice. The commission rate on the policy procured was 21.8%.
14. When management of the property was taken over by the RTM, Mr Bourqui procured insurance from two large reputable insurers with the same insured risks for a substantially lower premium and commission rate. The difference between the levels of premiums forms the basis of the calculation of the claim as appears from the table below.
15. The insurance policy which he put in place was underwritten by substantial reputable insurers, Allianz and Axa in respective years. The policies covered all insured risks and recognised the property is, in part, Grade II listed. The Applicants used the Respondent's Reinstatement Value when proposing a new policy. Having made a full disclosure of insured risks and using information previously applied by the Respondent, the Applicant was able to procure insurance at a lower premium than by the Respondent through its broker.
16. Mr Bourqui on behalf of the Applicants contended the Respondent had not complied with the obligations in the lease to ensure that any insurance policy represented value for money. Implicitly, policies were written with the

interests of the broker and Respondent gaining significant commission in breach of regulatory codes of conduct such as the Financial Conduct Authority's "Treating Customers Fairly" and its Code of Business Sourcebook.

17. A refund of premium on hand over to the RTM had not been distributed to the leaseholders.
18. Additional claims are for an excessive charge for procuring a reinstatement valuation. The sum charged to the Applicants was £786.00. Although the Applicants used the same calculations as used by the Respondents when seeking their own reinstatement valuation the sum charged was £200.00 by their valuer.

The Respondent

19. Mr Parteka described the methodology used by the Respondent's agents or broker to procure insurance. The Respondent has a substantial property portfolio. This property was Grade II listed. He asserted the Applicant had not drawn the listing to insurers attention. The policy offered by the insurers selected by City Gate provided cover for "all insurable risks" being wider cover than obtained by the Applicant. Although the Applicant's policy was cheaper it was not a like for like policy offering the same level of benefit and protection for leaseholders. The Reinstatement value was lower than the Respondent's policies thereby exposing the leaseholders to financial peril in the event of major accident.
20. As far as the refund is concerned, Mr Parteka asserted the money had been applied against accrued arrears of service charges.
21. Mr Parteka explained the Respondent is part of a group which consists of twelve companies each with a property portfolio. The total number of properties in the groups portfolios is forty thousand across England and Wales. He asserted that the Respondent's broker was able to secure favourable rates because of the size of property portfolio offered to the market. Further the policy obtained protected leaseholders from a wide range of risks and delivered benefits not included in the Applicant's policies which he described as a clause providing cover for "*all other risks not excluded in the policy*".

The Statutory Framework

22. Section 19 Landlord and Tenant Act 1985 provides that relevant cost shall be taken into account in determining the amount of a service charge payable for a period "*only to the extent they are reasonably incurred*" or they are of a reasonable standard. By s27A(1) this Tribunal has jurisdiction to determine

whether a charge is payable, by whom to whom and what amount. By subsection 2 provides that the Tribunal may make that determination “*whether or not any payment has been made*”.

Discussion Claim and Decision

23. In their Defence the Respondent asserts that *each property within the Respondent’s portfolio differs in character, in this case the matter turns on the buildings insurance treatment of a listed building*. The Tribunal has quoted this sentence from the Defence because of the recognition by the Respondent that each property in the portfolio differs in character. Although the Respondent’s subordinate clause refers to a listed building the principle formulated is correct. On the factual dispute about the disclosure by the Applicant that the building was Listed the Tribunal is satisfied the listing was disclosed.
24. It is the Tribunal’s decision that the meaning and effect of the lease was that had the property been the subject of an individual proposal a policy with substantially the same benefits to the leaseholders at a much lower premium could have been written as Mr Bourqui contends.
25. The insurers eventually appointed to insure the property, Allianz and Axa, were both among the insurers approached by the Respondent’s broker according to Mr Parteka. Mr Bourqui presented a like for like analysis which was not specifically challenged by Mr Parteka. The analysis indicated no significant differences in cover obtained by the Applicants including the insurance of “all other risks not excluded in the policy” condition which the Respondent identified as a specific benefit.
26. The Tribunal notes the explanation for the treatment of the premium refund but makes no determination on its rectitude as the accounts were not substantially in issue. It was not satisfied that the commission was a fair sum. The Tribunal is not interested in the division of commission between the broker and Respondent but is interested in the amount of total commission as a percentage of the premium.
27. The Tribunal is not satisfied that the Respondent has complied with its duty prescribed in the lease to ensure that the insurance represents value for money, because of its practice of procuring insurance by grouping together all the Respondent's properties with a single broker which offers the entire portfolio to the market, particularly bearing in mind ~~notwithstanding~~ the Respondent’s own submission that each property in the portfolio differs in character.

The Claim

28. Mr Bourqui presented a table of comparison which is reproduced here, the Additional Claims have been added to the table by the Tribunal. The total sum of the refund claim and the additional claims is £21235.00. The method of calculating the claim is at paragraph 29.

Year	Actual Insurance Premium	Our 2023 Insurance Premium ¹⁾	Inflation deduction ²⁾	Net premium	Actual premium Refund	Plus G&O Securities' commission	Amount of refund claimed
2019	£3,997	£3,978	27.3%	£2,892	£1,105	£640	£1,745
2020	£6,385	£3,978	26.1%	£2,940	£3,445	£1,022	£4,467
2021	£6,952	£3,978	22.7%	£3,075	£3,877	£1,112	£4,989
2022	£8,553	£3,978	8.4% ⁽³⁾	£3,644	£4,909	£1,638	£6,547
Total Refund Claimed:							£17,748

From table above:	£17,748
Plus Additional Claims:	
Refund for excessive valuation fee:	£ 586
Refund of cancelled policy premium:	£ 2,707
Compensation for annual contraventions of lease:	<u>£ 1,800</u>
 <u>Total Claim</u>	 <u>£22,841</u>

29. Building insurance premiums for each year were the sums actually paid. The sum used as the comparable premium under the heading 'Our 2023 Insurance Premium', is the sum actually paid in February 2023 for the cover arranged by Mr Bourqui on behalf of the RTM. The 'Net' premium is an adjustment for inflation using RPI and Office for National Statistics published information, to scale back the comparable premium in 2023 to the equivalent prices in the service charge years. The 'Net Premium' is the figure the Applicant says should have been charged each year, based on the amount they paid in 2023. Deducting net premium from actual premium produces the amount of refund claimed, to which is added the commission paid to G & O Securities which the Applicant contends is unreasonable.

30. The additional claims are for a refund described in paragraph 18 being the excess charge for obtaining a Reinstatement Cost Assessment in 2020. Second, the Applicants contended the Respondent has not properly accounted for a refund of £2707.00 which should have been distributed to them.

The Decision

31. The Tribunal is satisfied that the method of procuring insurance has produced insurance premiums which are not reasonable. The Applicant has produced

reliable evidence of suitable alternative insurance providers who offered better rates than those obtained by the Respondent. The insurers used by the Applicants were the same companies included in the offer to the market by the Respondent. The Tribunal determines that the sum of £17,748 was overpaid by the Applicants in respect of insurance premiums in years 2019-2022.

32. The fee paid for the Reinstatement Cost Assessment was not excessive. There is no obligation to accept the cheapest-fee provided the cost is not unreasonable. Furthermore, the Applicants relied on the assessment when placing their own insurance. There may have been other Valuers prepared to charge less but the Tribunal does not consider the cost of the fee to be outside the range of reasonable prices for this work.
33. The refund of £2707.00 was made by the Respondent but not in cash. The reasonableness of the service charges against which the refund was set off is the subject of separate proceedings.
34. The Tribunal is unable to consider the Applicant's claim of £1,800 for financial compensation which is outside its statutory remit.

Appeal

35. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge P.J. Ellis
Tribunal member Mr I Humphries