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

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|---|---|---|
| **Case reference** | : | HAV/45UC/LSC/2025/0641 |
| **Property** | : | Flat 3, 97 Bayford Road, Littlehampton, BN17 5HW |
| **Applicant** | : | Timothy Hughes |
| **Representative** | : | Peter Halm |
| **Respondent** | : | Michael William Davis |
| **Representative** | : | Robert Herrod of counsel<br>Instructed by ODT Solicitors |
| **Type of application** | : | Determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 |
| **Tribunal members** | : | Chair R Waterhouse FRICS<br>J Reichel MRICS<br>J Dalal |
| **Venue** | : | Remote video Platform |
| **Date of hearing/ decision** | : | 31 October 2025 |

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**DECISION**

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## Decisions of the Tribunal

**1. The Tribunal determines the service charge in respect of the insurance for the following years payable:**

| Year | Apportionment for flat 3 at 25% £ |
|---|---|
| 2024-2025 | 709.82 |
| 2023-2024 | 643.74 |
| 2022-2023 | 554.75 |
| 2021-2022 | 480.89 |
| 2020-2021 | 450.47 |
| 2019/2020 | 392.07 |

**2. The Tribunal finds the section 20 procedure to be valid and if the Tribunal is wrong on this point the Tribunal grants dispensation under Landlord and Tenant Act 1985 section 20 ZA.**

**3. The Tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002 Paragraph 5A of Schedule 11.**

## Background

1. The Applicant made an application for determination of liability to pay and reasonableness of service charges for the service charge year 2019/2020 to 2024/2025 inclusive.

2. The application dated 18 March 2025 was made by the Timothy Hughes the leaseholder of Flat 3, 97 Bayford Road, Littlehampton, BN17 5HW.

3. The Applicant further sought Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

4. Directions were issued on 21 May 2025 listing the application for a case management and dispute resolution hearing on 6 June 2025.

5. The case management and dispute resolution hearing took place on 6 June 2025 when it was confirmed that the issues in dispute for this application related to buildings insurance, the issues arising from the consultation notice and the major works.

6. Directions were issued on 6 June 2025, providing for the exchange of documents and the compilation of the Bundle by the applicant.

## Preliminary Matters

7. In the days before the Tribunal, it became apparent that the parties were having difficulty agreeing a Bundle.

8. On the day before the Tribunal a case management applicant was made by the Respondent inviting the Tribunal to permit the inclusion of a "supplementary bundle". The Tribunal was notified that counsel had been appointed and a skeleton argument submitted by the respondent and the "supplementary bundle of around 40 pages in addition to the original bundle of 618 pages.

9. At the hearing the Applicant objected to the inclusion of the Bundle and the Tribunal took representations from both parties on its inclusion. The Tribunal took a short adjournment and deliberated the issue determining that it was in the interests of justice to include the supplementary bundle but, that the Applicant should have 15 minutes to familiarise themselves with the bundle and so the Tribunal adjourned for this.

## The Issues

10. Present at the hearing were the Applicant's representative Mr Halm, accompanied by a witness Mr Elliott Assoc RICS, MRPSA. For the respondent, Mr Davis the freeholder, a witness Mr Thom a Chartered Building Surveyor, Ciara Fowler of ODT Solicitors, and Mr Herrod of counsel.

11. The Tribunal referring to the witness statement of Timothy Hughes [457] listed the issues to be determined by the Tribunal.

- Unreasonable buildings insurance charge
- Defective Notice of Intention – section 20 Consultation
- Unreasonable delay and historical inaction
- Questionable Major Works costs and lack of transparency
- Procedurally defective demand of £8000 for internal works
- Lack of transparency and poor administration
- Attempts to engage in Informal Resolution
- Orders and Directions sought.

Both parties agreed these constituted the matters to be resolved. The Tribunal turned to each item in turn.

## The Apportionment of Service Charge under the lease

12. For the record the lease provides the following apportionment, which is not challenged;

The lease at [397] states

"4. The lessee hereby covenants with the lessor and with the owners and lessees of the other flats comprised in the property that the lessee will at all times hereafter-

(b) (i) pay and contribute in manner hereinafter provided Twenty Five per cent of all monies expanded by the lessor in complying with its covenants in relation to the property as set forth in clause 6 hereof."

## Unreasonable building insurance charge

13. The Applicant set out their case which was that the insurance premium for the property was too high. The Applicant's contentions around insurance fell into three areas; rebuilding costs, scope and commission each is considered below. The Applicant called Mr Elliot as a witness. The Respondent called Mr Thom a Chartered Building surveyor as a witness.

## Insurance- rebuilding costs

14. The applicant referred the Tribunal to the witness statement of Mr Elliot, witness for the applicant [ 463] Mr Elliot was taken through his witness statement, identifying that he had been retained to provide a rebuilding cost for the property.

## Was there reference to comparable properties?

**15.** Mr Helm noted the unique nature of the road, said to be the longest terrace in Europe. The point being made by Mr Helm was that number 77 from which the other insurance quote was derived was in the same location, of the same nature and to the same size. The cost of insurance of number 77 forming the basis of the challenge by the Applicant to the reasonableness of the insurance premium.

## Was the property subject to an inspection?

16. Mr Elliot confirmed that he had not inspected the property but carried out a desk top survey using internal areas. Mr Thom for the respondent noted he had inspected the property and Mr Thom noted that Mr Elliot had used net internal area measurements when in Mr Thom's view Gross External measurements were appropriate.

## What is the basis of the rebuilding rate?

17. Mr Elliot confirmed that he had adopted a rate of £3000 per square metre rebuilding costs. When asked by Mr Herrod Mr Elliott commented this was based on his experience in the vicinity. When asked if Mr Elliott

had considered the building costs of any comparable properties, he replied that he had not. The application of £3000 per meter squared to the internal floor area, some 132 square meters, resulted in a rebuild cost net of fees of £396,000. In reviewing Mr Elliots costing Mr Thom noted a figure of £3000 was adopted, Mr Thom preferring reference to BCIS data for rebuilding **rate per meter** for a terrace in Arun, which was £3562 per meter [74]. Mr Herrod asked Mr Elliot if he had experience in managing new builds or rebuilding and Mr Elliot replied he had not.

**What should the level of professional fees be?**

18. Mr Elliott applied £15,000 fees. Upon questioning by Mr Herrod, Mr Elliott described this as a figure in consideration of all fees, the precise amounts for each type of fee, were included but not itemised. Mr Herrod asked the Mr Elliot to comment on the level of fees adopted by the respondents witness Mr Thom at £100,000 [474] and whether an itemised approach including such items as project managers, building control and architects drawings were relevant. Mr Elliot considered that for a project of this size a medium contractor would be sufficient and that there would therefore be no need for a project manager. Mr Herrod asked whether Mr Elliot had been asked to consider previous cost years, Mr Elliot confirmed only the year of 2025/2026.

**Should there be a contingency and if so what level?**

19. In terms of contingency Mr Herrod put to Mr Elliot that he had omitted a figure for contingency, and that Mr Thoms had adopted 10% to reflect this. Mr Elliot explained that his figure was inclusive of the contingency given there would be a single medium sized contractor for a development of this nature.

**External works- drainage-boundary walls and demolition costs**

20. Mr Herrod challenged Mr Elliot on the lack of sums associated with external works. When questioned Mr Thom expressed concern that no figure for demolition and site preparation had been included. Mr Elliot responding that costs for demolition were included in his figures and that a figure of 10% was correct.

**Rebuilding costs - Summary**

21. Mr Halm invited the Tribunal to accept the rebuilding costs for the property for the current service charge year of 2025 / 2026 as £450,000.

22. Mr Herrod invited the Tribunal to adopt the rebuilding costs of Mr Thom. Mr Thom was asked to prepare a rebuild costing for June 2025, the outcome being £818,780. Mr Thom concluded that a rebuild cost of £844,095 was within tolerance. This figure was in the context of the

previous appraisal of building costs carried out by the previous managing agent, PSB undertook a rebuild costing in September 2020 and concluded a figure of £ 580,000.

## Analysis and determination

23. Mr Herrod for the respondent referred the Tribunal to his skeleton argument at paragraph 18 which refers to *Cos Services Ltd v Nicholson & Williams [2017] UKUT 382 (LC).*

> "Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will 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. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they "compare like with like"), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease."

24. The Tribunal has heard from two witnesses. The Tribunal notes the two different approaches that of Mr Elliot an all-encompassing approach based on experience of the locality, and Mr Thom's a more forensic approach with each element individually considered. The Tribunal is also conscious of the experience of the two witnesses, Mr Elliot qualified but with no direct experience of managing rebuilding or development. Mr Thom's whose expertise is in rebuilding costs. The Tribunal on balance prefers the evidence of Mr Thom for reasons that first his expertise lies in rebuilding costs and second his incremental approach permits the Tribunal to test the reasoning of each stage, which the Tribunal finds reasonable.

## Reference to the cost of other insured buildings in the vicinity

25. Mr Halm sought to rely on the insurance premiums payable under number 77 Bayford Road.

26. The Applicant referred the Tribunal to [457] the witness statement of Mr Hughes which refers to number 77 Bayford Road, and the insurance premiums paid there. The Applicant contends the terrace is made up of identical properties and so asserts the insurance premium for one can be relied upon as a comparable for another. The Tribunal was not furnished with evidence on how the Applicant is aware of these figures but notes at [457] that Mr Hughes says he owns another property in 77 Bayford Road. The Tribunal has not heard evidence as to when the

building had last been professionally appraised to reset the rebuilding costs. The figures from number 77 are set out below;

| **Year** | **Total for 77 Bayford Road £** | **applicant for flat 3 derived from number 77 Bayford Road. £** |
|---|---|---|
| 24/25 | 862 | 215 |
| 23/24 | 910 | 227 |
| 22/23 | 665 | 166.25 |
| 21/22 | 577 | 144.25 |
| 20/21 | 501 | 125 |
| 19/20 | 492 | 123 |

27. Mr Herrod explained that the Mr Davis' freeholder property was managed by Davis Properties Ltd, and that Davis Properties Ltd was responsible for securing the properties insurance this they did by an insurance broker. The Respondent exhibited a witness statement from the insurance broker Mr Brindley. Mr Davis confirmed that the subject property was not insured as part of a wider portfolio.

28. Turning to the witness statement of Steven Brindley the insurance broker to the Respondent, Mr Brindley was not present, but the Applicant accepted his witness statement. Mr Herrod drew the attention of the Tribunal to paragraph 3.8 and 3.9 at [488] where indexation had been applied to the rebuild costs. The Tribunal notes that at paragraph 3.7

"If CRV ( cost reinstatement value ) is provided in 2020 then ,under the terms of the policy that I have specifically negotiated with RSA/NIG , no average clause will be imposed on the proviso that a further CRV is undertaken within 5 years (ie the claim will not be affected by potential under insurance) and each year that declared value as stated on the original CRV is indexed linked. The DV (Declared Valuation) is therefore index- linked CRV".

29. The witness was not available to examine on the word "if" and the applicant did not challenge this.

30. Mr Herrold referred to paragraph 3.17 [490] in the Mr Brindley witness statement, where he set out three comparables that were said to be very near the subject property. These show properties with the following;

| **Postcode** | **Declared value** | **Insurance premium including premium** |
|---|---|---|

| | | **tax but excluding terrorism** |
|---|---|---|
| BN17 7XX | £855,148<br>Sum insured<br>£1,154,450 | £3524.57 |
| BN17 7XX | £399,358 sum insured<br>£539,133 | £1700.00 |
| BN17 5XX | £965,059 sum insured<br>£ 1,302,830 | £3981.91 |

31. In Mr Brindley's witness statement, the witness presented the above three comparable insurance quotes to indicate that number 97 was not "being singled out for any unusual high rating".

32. Mr Brindley the witness was not available to question, so it was not known how these sums were made up in terms of commission being included.

**Analysis and determination**

33. The Tribunal finds the evidence of Mr Hughes in respect of costs of insurance of number 77 does not take the Tribunal very far because there is no evidence to say when the property rebuilding costs had last been appraised.

34. In terms of the evidence of Mr Brindley it can be seen that the level of insurance premium for the subject property is not out of line with the comparable properties but his evidence does not include to what extent these premiums may or may not include commission.

**Scope of insurance**

35. The Tribunal turns to the extent of the insurance. The Applicant contends that the insurance includes unnecessary matters; employers' liability, property owners' liability, cover for alternative accommodation and /or cover for loss of rent.

36. The evidence of Mr Brindley, witness for the respondent, supports the need to have "Property Owners Liability cover in place [488]. At para 3.12 Mr Brindley notes that the insurance cover includes "alternative accommodation costs or loss of rent cover dependant on whether the flat is owner occupied or rented out, and terrorism cover is also considered".

**37. Analysis and determination**

38. The landlord is only required to insure the property to the extent the lease requires, and the tenant to pay only to that extent, see the lease [392] which states at [401]

> "(B) The lessor will at all times during the said term insure and keep insured comprehensively the Property in some Insurance Office of repute in the full replacement value thereof and whenever required produce to the lessee a copy of the policy or policies of such insurance or the relevant part or parts thereof and the receipt for the last premium for the same and will in the event of the flat being damaged or destroyed by any of the said risks as soon as reasonably practicable lay out the insurance monies received in repairing rebuilding and reinstating the same. "

39. The Tribunal has not seen within the lease any provisions that afford the landlord discretion on extending the scope of this insurance.

40. The Tribunal has not received any evidence on the extent that the inclusion of these items may or may not increase the premium.

41. The Tribunal is cognisant of *Cos Services Ltd v Nicholson & Williams [2017] UKUT 382 (LC).* In the absence of any specific evidence that the premiums are increased by the inclusion of these matters the Tribunal is unable to disturb the extent of the premium on this ground.

**Commission**

42. The Tribunal now turns to turns the question of commission. At [577] the "Leaseholder Insurance Information Disclosure Document" notes that for a policy start date of 24/06/2025, for a Building declared value of £844,095 the renewal premium is £3677.55, of which, £1073.86 is commission. This commission is divided into £ 749.73 for the insurance broker "Preston Insurance Brokers LLP", and £324.13 for Davis Property Limited.

43. The Tribunal did not have the opportunity to exam the witness on the commission as they were not present and so relies on their witness statement. The Tribunal however has the witness statement of Mr Davis and upon questioning Mr Davis conceded that he as freeholder does not receive any commission from the insurance. Under further questioning Mr Davis said that his company Davis Property Ltd received commission, the exact amount he could not recall during questioning.

44. The Tribunal considers the landlord under the lease has the responsibility for insuring the premises. However, the landlord did not, discharge the responsibility to obtain insurance themselves; they appointed Davis Property Ltd to do so and in turn Davis Property Ltd appointed an insurance broker. The Tribunal has heard no evidence on what work if any was undertaken by the managing agent or the broker in attaining this commission. In respect of the managing agent in the

absence of any specific work undertaken the Tribunal takes the view that arrangement of insurance would normally fall to be part of the general duties of the managing agent, so commission so attributed is disallowed. In terms of the insurance broker, it is acknowledged that commission for brokers forms part of their normal service practice. In this case the premium net of commission for the year 25/26 was £2603.69 and the commission attributed to the broker was £749.73, this amounts to around 28.76%. The Tribunal considers a commission of £400 would be more in line with industry practice for the year 25/26 thus giving a total figure for insurance of £3,003.69.

**Which service charge years are impacted?**

45. The Tribunal has a complete breakdown of the cost and commission elements of the insurance is the policy year starting 24 June 2025 with is 2025/2026 service charge year.

46. Specifically, this is for a Building declared value of £844,095 the premium is £3677.55, of which, £1073.86 is commission. This commission is divided into £749.73 for the insurance broker "Preston Insurance Brokers LLP", and £324.13 for Davis Property Limited.

47. The Tribunal above has determined that of the £1073.86, a sum of £400 is payable. This amounts to a reduction in the total, inclusive of insurance premium, from £3677.55 to £3003.69 a figure of some 81.67%, equivalent to a 18.32% discount.

48. The witness statement of Mr Brindley notes at paragraph 2 that the freeholder had known the witness since 1995 and had been placing insurance with him since that date.

49. The relationship with Mr Brindley in these matters is with Davis Property Ltd. In the witness statement at 3.1 [487] Mr Brindley says "although the Respondent no longer manages the Property, which I understand is currently managed by Stuart Radley, I continue to place the Buildings Insurance for the Building."

50. Given the long-standing relationship between the broker and the freeholder and managing agent, it is reasonable to assume the same arrangements as to commission have been long standing.

51. The Tribunal therefore in the absence of any specific evidence on amount applies an 18.32% discount to the insurance premiums for each of the challenged years.

52. This amounts to;

| Year | Previous premium £ | Determined Premium (gross premium less 18.32%) £ | Apportionment for flat 3 at 25% £ |
|---|---|---|---|
| 2025-2026 | 3677.55 | Outside scope of the application | Outside scope of the application |
| 2024-2025 | 3476.12 | 2838.29 | 709.82 |
| 2023-2024 | 3152.50 | 2574.96 | 643.74 |
| 2022-2023 | 2716.68 | 2218.98 | 554.75 |
| 2021-2022 | 2354.97 | 1923.54 | 480.89 |
| 2020-2021 | 2206.00 | 1801.86 | 450.47 |
| 2019/2020 | 1920.00 | 1568.26 | 392.07 |

**Section 20 consultation validity.**

53. The Applicant contends the section 20 process was invalid because the Applicant failed to receive the relevant notices within the correct time period this led the Applicant to be unable to find alternative quotes because by the time they realised the process was under way a series of tenders had been received and were publicly available thus negating the possibility of alternative quotes. The Applicant noted that the property was let out and that the managing agent knew the preferred method of contact was by e mail. The lease at paragraph 8 [409] refers to section 196 of the Law of Property Act 1925.

54. The Law of Property Act 1925 section 196 states;

"Regulations respecting notices

(1) Any notice required or authorised to be served or given by this Act shall be in writing
(2) ....
(3) Any notice required or authorised by this act to be served shall be sufficiently serviced if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor mortgagor, or other person to be served
(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if sent by post in a registered letter addressed to the lessee, lessor, mortgagee or... by name, at the aforesaid place of abode or business office or counting house. And if the letter is not returned, ....."

55. For the Respondent Mr Herrod contended that service was validly made in accordance with section 196. The Applicant asserted that the preferred method was e mail but did not challenge validity under section 196.

56. In the alternative the Respondent made an application under section 20ZA for dispensation citing *Daejan Investments Ltd v Benson* within the hearing. The Respondent asserted that there had been a lack of

prejudice suffered by the Applicant, given the Applicant's ability to submit alternative tenders in challenging the cost of the works. The Applicant asserted prejudice in their inability to supply alternative tenders at an early stage.

57. The Tribunal finds that the Applicant's contention of service by e mail would not be valid under the LPA 25 section 196, and so in the absence of further information the Tribunal finds service validly made.

58. If the Tribunal is wrong on this point then the Tribunal considers the Applicant has the ability as it does here to challenge the costs and in doing so could if wished supply alternative costings that would seek to challenge excess or unreasonable costings in respect of the service charge for major works, The Tribunal therefore grants dispensation if the Tribunal were wrong on the issue of the validity of the section 20 notices so served.

**Reasonableness of the amount for the major works**

59. The Respondent's expert witness Mr Thom noted that two tenders were received for the works, and the lower one was accepted. There was a delay in the start of the works because the managing agents changed. This delay resulted in the tender being increased by £1000. However, when the works were executed, they came in under the amount of the tender, according to the evidence of Mr Thom.

60. The Applicant felt they would have liked to arrange for alternative quotes however, no alternative quote was submitted in the challenge to the section 27A application, nor any challenge on the quality of works undertaken.

**Unreasonable delay and historical inaction**

61. This item from the Applicant's position statement has been covered in the above deliberations.

**Questionable Major Works costs and lack of transparency**

62. This item from the Applicant's position statement has been covered in the above deliberations.

**Procedurally defective demand of £8000 for internal works**

63. The Tribunal was informed that both parties had reached agreement in this regard, so the Tribunal did not consider this.

**Lack of transparency and poor administration**

64. The Tribunal has considered this in the above deliberations

**Attempts to engage in Informal Resolution**

65. Mr Herrod for the respondent, pointed out that this related to "without prejudice discussions" and the Applicant agreed. Without prejudice discussions cannot form part of the deliberations of the Tribunal and this aspect was not considered.

**Application for an Order under the Landlord and Tenant Act 1985 20C and Commonhold and Leasehold Reform Act 2002 paragraph 5A of Schedule 11.**

66. The Applicant asserted that it was disappointing that it had taken time to gain documentation and had felt frustrated by the process. Mr Herrod for the Respondent asserted that the behaviour of the Respondent was not such that such an order should be made.

67. The Tribunal considers that the applicant has been partially successful in their challenges and so make a full Order under Landlord and Tenant Act 1985 section 20C and Commonhold and Leasehold Reform Act 2002 paragraph 5A of Schedule 11.

## 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).