FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LSC/2024/0748** *(formerly LON/00AC/LSC/2022/0010)*
Property	**:**	**Boswell Court and Hitherwood Court, Charcot Road, London NW9**
Applicants	**:**	**(1) Joseph Darryl Douglas (acting for himself and other named leaseholders of Boswell Court and Hitherwood Court)** **(2) Colindale Hospital Management Company Limited**
Representative	**:**	**Joseph Darryl Douglas**
Respondent	**:**	**RMB 102 Limited (freeholder)**
Representative	**:**	**J B Leitch Solicitors**
Type of application	**:**	**Service Charges (section 27A Landlord and Tenant Act 1985)**
Tribunal	**:**	**Judge Sheftel** **Mr Stephen Mason FRICS**
Date of Decision	**:**	**9 April 2025**

DECISION

Summary of Decision

As set out at paragraphs 78-79 below, the tribunal determines that the amount reasonably incurred in respect of insurance for Boswell Court and Hitherwood Court is the rate of £2.17 per £1,000 of declared value. As such, the total sum reasonably incurred for the service charge years in question is £410,731.

Background

1. This is an application dated 2 December 2021 by 42 named leaseholders under section 27A of the Landlord and Tenant Act 1985 (the "1985 Act"). The Applicants also sought orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") in relation to the costs of the proceedings.

2. The application initially challenged the payability and reasonableness of service charge costs in respect of insurance premiums for the year 2021-22 for Boswell Court and Hitherwood Court, London NW9, two of the blocks on the development known as Colindale Pulse. This was subsequently amended so that all service charge years from 2020-21 through to 2024-25 were included. It was said that the premiums had increased by 185% and 182% respectively, compared with an average increase for other buildings on the same development of 17%.

3. The original proceedings were issued against E&J Estates (the freeholder's appointed agent) and Crabtree Property Management (the managing agents). On 26 May 2022, the freeholder, RMB 102 Limited was added as Third Respondent.

4. A hearing was fixed for 27 July 2022, but this was converted to a case management hearing to consider applications to amend the parties further and to strike out the application. By decision dated 15 August 2022, the Tribunal removed E&J Estates and Crabtree Property Management as Respondents, found that the application had no reasonable prospect of success and struck it out.

5. On appeal, by decision dated 22 August 2023, the Upper Tribunal overturned the strike-out decision. In doing so, Martin Rodger KC, the Deputy Chamber President, said [at 54]:

> "*There is no doubt that the comparison which the leaseholders are able to make in this case between the rate of increase of their insurance premiums since 2019, and the rate of increase in premiums payable by leaseholders of similar properties on the same estate in blocks owned by different freeholders, is striking and calls for an explanation. In my judgment the FTT was wrong to strike the application out, and I remit the matter to it for determination.*"

6. Following that hearing, Colindale Hospital Management Company Limited (the "Management Company"), a lessee-owned management company, was added to the proceedings as a Second Applicant. Mr Douglas, the lead applicant, is also a director of the Second Applicant. The role of the Management Company and its implications regarding the service charges relating to insurance is discussed below.

7. In short, the Applicants' case is that the cost of insurance for Boswell Court and Hitherwood Court is unreasonably and inexplicably high. In addition, the Applicants have also raised an issue as to whether the insurance has been placed in accordance with the terms of the lease. Insofar as it has not, it is said by the Applicants that nothing should be payable. There are therefore 2 principal issues before the tribunal:

    (1) Whether the insurance was in accordance with the contractual provisions of the lease; and

    (2) Alternatively, a challenge to the reasonableness of the sums claimed.

The hearing

8. The hearing of this matter took place on 4-5 March 2025. The Applicants were represented by Mr Joseph Douglas, assisted by Ms Deborah Kol (who is not a leaseholder of either block), and the Respondent by Mr Simon Allison, of counsel, instructed by JB Leitch, solicitors. The tribunal heard witness evidence from Mr Douglas on behalf of the Applicants and Mr Tim Wilson of E&J Estates on behalf of the Respodnent.

9. The tribunal is grateful to all parties for their assistance and notes, in particular, the amount of work that has been undertaken by Mr Douglas in relation to this matter.

10. In advance of the hearing, on 14 February 2025 the Applicants made an application that the Respondent's defence should be struck out. This was brought following receipt of disclosure by the Applicants. It was said that the documents revealed that the insurance broker AJG's client was not in fact the Respondent but was instead Penult (who the Applicants had

understood was the appointed representative of AJG). It was said that in light of this, insurance policies had been priced to the detriment of leaseholders and that it could no longer be argued that the insurance policies were incurred in the ordinary course of business. As a result, it was suggested that the Respondent could no longer advance a properly arguable case. The tribunal gave directions on 18 February 2025 that the application to strike out should be dealt with at the start of the hearing. The Respondent subsequently provided written submissions in opposition. However, at the hearing, the Applicants confirmed that as all parties were present it made sense that the hearing should proceed. We agree that this approach was appropriate on the basis that even if the Applicants were correct in their assertions within the strike out application, these were matters that could only properly be resolved after hearing the parties' evidence, rather than summarily.

11. Prior to the hearing, the Applicants had also indicated that a further 32 leaseholders wished to be added to the proceedings. The tribunal gave a direction during the hearing, confirmed to the parties in writing thereafter, that if these leaseholders wished to be added to the proceedings, they should provide written confirmation to the tribunal (copied to the Respondent) by 18 March 2025. The tribunal subsequently received emails from lessees of the following flats as set out further in the annex to this Decision, who are accordingly added as Applicants:

    (1) Flats 8, 16, 26, 36, 37, 40, 46 Boswell Court;

    (2) Flats 2, 3, 9, 10, 11, 14, 15, 17, 19, 23, 29, 33, 38, 47, 49, 51, 53, 57, 65, 73, 79, 80 Hitherwood Court.

12. Finally, it should be noted that after the conclusion of the hearing, Mr Douglas made two applications as follows:

    (1) Application dated 5 March 2025: Mr Douglas stated that he "sub-delegation document" disclosure matter detailed in Applicant's strike out application dated 14 Feb 25 was inadvertently not addressed at the hearing. It was suggested that the broker, AJG, had indicated that the relevant

document was in the Respondent's possession. Mr Douglas went on to say that "I want to state this for the record as should this case go to appeal I believe this document may become relevant and therefore I may need to seek further disclosure". As this does not require anything further of the tribunal, was not raised by the parties in submissions and does not impact on our decision as set out below, we make no further comment on this application.

(2) Application dated 9 March 2025: The application related to disclosure that was received after the conclusion of the hearing. This had arisen from the tribunal's order of 25 January 2025; the disclosure in question relating to documentation relating to Freehold Properties 42 Limited and Gray's Inn 15 Limited under the Third Debenture dated 30 April 2018. The documents relate to the wider question of whether the insurance was in accordance with the terms of the lease and more specifically the alleged assignment of the Respondent's rights as set out at paragraphs [58-59] below – it had been indicated during the hearing by the Applicant that such documentation would be provided. This did not impact upon or alter the tribunal's determination as set out further below.

The law

13. Before turning to the principal issues in dispute, it is worth setting out the relevant law as it frames the extent of the tribunal's jurisdiction. Pursuant to the Landlord and Tenant Act 1985:

> "18 Meaning of "service Charge" and "relevant cost"
>
> (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 Limitation of service charges: reasonableness

(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 Liability to pay service charges: jurisdiction

(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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter."

14. The reason that it is important to have regard to the above provisions is because the Applicants have framed their claim in very broad terms. Allegations have been made by the Applicants that there has been a breach of fiduciary duty and secret profits. While such matters might illuminate whether costs have been reasonably incurred, the tribunal's jurisdiction is limited to the determination of the payability of service charges in accordance with the above statutory framework. The tribunal has no power, for example, to consider claims for repayment of secret commissions, damages for breach of fiduciary duty or breaches of insurance regulations. The tribunal also has no power to regulate insurance industry practices if and to the extent that the claim was argued this way.

The lease

15. Boswell Court and Hitherwood Court are two adjacent blocks of flats in north London containing a combined total of 157 flats or apartments let on long leases. They form part of a much larger residential development on the site of the former Colindale Hospital. Each of the leases is made between the landlord, the leaseholder, and the Management Company which, as noted above, is now under the control of the leaseholders and has been added as the Second Applicant in these proceedings.

16. The leases, which we understand are in common form, oblige the management company to procure buildings insurance from an insurance company nominated by the landlord. The leaseholders are required to pay a service charge to the management company including a contribution towards the cost of insurance.

17. The relevant provisions of the lease are set out in full in the Upper Tribunal's decision. However, for the purposes of these proceedings, it is worth setting out the following provisions.

18. The Company's obligations listed in Part IV of the Schedule to the Lease include, at paragraph 7, the following concerning insurance:

> "*The Company will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessee) insure and keep insured the Block (including lifts if any) and the contents of the Common Parts in the names of the Lessor the Lessee their mortgagees (according to the respective estates and interests) and the Company against comprehensive risks with an insurance company of repute nominated by the Lessor and through the agency of the Lessor …*".

19. By clauses 7 and 8 the Company covenants with the Lessee and the Lessor respectively to perform the obligations in Part IV of the Schedule. In the event of Management Company's failure to perform its obligations it authorised the Lessor to do so and to recover the Lessee's contribution as agent for the Management Company:

> "*8. The Company HEREBY COVENANTS with the Lessor to perform and observe the obligations and each of them set out in Part IV of the Schedule hereto In the event of the Company failing to perform and observe the said obligations or any of them the Company hereby authorises the Lessor as its agent to perform and observe the said obligations or any of them and to recover from the Lessee the due proportion of the costs charges and expenses so incurred by the Lessor as agent for the Company*."

20. The general structure of the lease is, therefore, that services (including insurance) would be provided by the Management Company which, in turn, would receive the service charge contributions from the lessees. The Respondent's role under the lease is to nominate the insurer. However, it appears that as a matter of fact, this has never happened. The Management Company has never placed the insurance. Rather, this has been done by the landlord, through its agent E&J Estates, with the costs invoiced by the landlord's agent to the Management Company. The

Management Company has in turn issued service charge demands to leaseholders.

21. It should be noted that clause 4(6) of the lease also provides a mechanism for the Respondent to step-in to provide the services in the event of a default by the Management Company:

> "*Subject to the provisions of clause 8 of this Lease if during the term hereby granted the Company shall fail or neglect to perform and observe its obligations or any of them hereunder or shall go into liquidation the Lessor shall undertake (or by action or otherwise compel the Company to undertake) the obligations or any of them hereby agreed to be undertaken by the Company and shall be entitled to recover from the Lessee a due proportion of all monies costs charges and expenses incurred by the Lessor in connection therewith*."

22. Mr Allison was at pains to point out, however, that the landlord had never exercised the formal step-in rights under the lease – there was no evidence before the tribunal that this has happened and no evidence of charges levied by the Respondent directly to individual lessees.

23. Further, although clause 8 of the lease set out above allows the Respondent to perform covenants as agent for the Management Company, and to "recover from the Lessee the due proportion of the costs", it was the Respondent's case that although it had placed the insurance, it did not recover costs directly from the lessees – that was done by the Management Company. Again, there was no evidence of any charge levied directly by the Respondent to individual lessees whether as agent for the Management Company or otherwise.

The factual background

24. Before turning to the specific grounds of challenge, it is worth setting out the background to the placing of the insurance.

25. As noted above, although the lease envisaged that insurance is placed by the Management Company with an insurer nominated by the Respondent, this is not what has happened. Rather, the insurance was placed through the Respondent's agent, E&J Estates. For all of the

service charge years in question, the insurance has been provided by Zurich. However, this has been done through the use of a captive.

26. According to the Respondent's statement of case and the evidence of Mr Wilson, although the insurance was ultimately provided by Zurich, some of the key features of the structure of the insurance arrangements were as follows:

- Penult Capital Partners Limited ("PCP") is a regulated insurance entity within the Respondent's group. In practice, the Respondent instructs PCP to procure buildings and terrorism insurance for the properties and the premiums are then invoiced by E&J Estates on behalf of the Respondent to the Second Applicant (Management Company).
- Arthur J Gallagher and Co ("AJG") is an independent and Financial Conduct Authority-regulated insurance broker, which acts as an intermediary between the Respondent and the Respondent's nominated insurance company, Zurich to find a suitable policy. AJG appoints PCP as its representative pursuant to an Appointed Representative Agreement, under which Mr Wilson is an 'Approved Person' for the purposes of section 59 of the Financial Services and Markets Act 2000.
- Augustus Insurance Company Limited ("Augustus") is a company registered in Guernsey and regulated by the Guernsey Financial Services Commission. Augustus provides reinsurance to three major UK direct insurance companies - described as the captive arrangement.

27. In terms of the division of the overall premium cost, the tribunal was provided with a diagram (which was not contested by the parties), which showed that the original arrangement was that Zurich retained 68% of the premium and Augustus 22.45%. The remainder of the costs was described as 'commissions'.

28. In terms of commissions, it appears that that PCP initially received 'commission' of 9.97% (although this has been reduced to 4% as the premiums have become more expensive), and AJG of 2.58%. However, the Respondent maintains that these are not commissions properly so-

called but are instead payments for services provided. According to Mr Wilson, the sums attributable to PCP do not increase the premium because the services provided by PCP would otherwise have to be carried out by the broker or insurer. It was also asserted that PCP's commissions are at the lowest end of the residential spectrum.

29. The Respondent's position is that although the transaction was not entirely at arm's length, it has nevertheless been transparent.

30. According to Mr Wilson, the use of a captive does not necessarily increase insurance costs, and indeed can reduce costs because it limits volatility. He maintained that it is common for in insurers such as Zurich to offset risk or reinsure. A way in which this can be done is for the insured to operate a self-insurance captive. Mr Wilson's explanation was that a captive insurer is an entity that reinsurers the risk of other companies within the same group. It was his experience that reinsurance facilities are essential to secure support from the direct insurance market for multi-occupancy residential risks, where insurers generally have in recent years limited their exposure to this class of business in light of increased knowledge of the extent of fire safety defects and the growing incidence and cost of escape of water losses. The Respondent stressed that although the captive (Augustus) is part of the Respondent group, it is managed separately by different directors.

31. Mr Wilson's evidence was that the structure of the reinsurance contracts in this case allows the insurer to transfer volatility of variable claims patterns, for example weather losses, to the reinsurer. The benefit to leaseholders is the consequent ability to obtain cover for more challenging risks and to limit the pricing. In the present case, the cover provided by Augustus covered the first £500,00 of specific claims for buildings insurance, subject to an annual aggregate maximum exposure of 125% of its premium allocation. Its role is "to provide protection against the multiple "attritional" losses which occur routinely on a large residential portfolio, but under a certain level". It was also asserted that if Zurich could find materially lower reinsuring pricing elsewhere, it had the option to take it.

32. This analysis, and the suggestion that the use of a captive can operate to reduce costs, was contested by the Applicants. They maintained that the role of the captive operates to increase the overall premium because it results in a closed market and reduces competition. It was asserted that it is the captive (part of the Respondent's group) which has the principal role in price setting. The Respondent had produced an email dated 9 April 2024 from a Chief Compliance Officer at Zurich which stated that "*… the captive arrangement, which applies to reinsure us for certain claims, allows us to provide more favourable premium terms to the insured and hence the leaseholders than would otherwise be the case*". However, this was contested by the Applicants who noted that the author of the email had not been called as a witness so that their evidence could be tested on cross-examination – and therefore, the email should carry little weight.

What are the service charges that are to be considered?

33. One of the matters raised by the Respondent was as to the extent of the tribunal's jurisdiction in relation to the application. When the original application was first before the tribunal, it had been argued that the insurance costs were not "relevant costs" within the meaning of section 18 of the 1985 Act on the grounds that they were not incurred by or on behalf of the landlord. The issue of whether the tribunal has jurisdiction to hear the main application was ultimately resolved by the Upper Tribunal in the Applicants' favour. The Upper Tribunal recorded that the payments made by the Management Company to the insurer would not be service charges within the meaning of section 18 of the 1985 Act because they are not an amount payable by a tenant as part of or in addition to the rent:

> "*36. The contractual structure in this case requires the leaseholders to pay the service charge for insurance to the management company. The management company uses those funds to pay the insurer. The payments made by the management company to the insurer are not service charges within the meaning of section 18 because they are not an amount payable by a tenant as part of or in addition to the rent. They are amounts payable by the management company, which is not a tenant.*

37. The contributions by the leaseholders to the management company are a service charge within the meaning of section 18. As Chadwick LJ explained in Cinnamon*, the management company is a "landlord" for the purposes of the service charge provisions of the 1985 Act because it falls within the expanded definition in section 30 as a "person who has a right to enforce payment of a service charge."*"

34. However, it did not follow that the case should be struck out. The contributions by the leaseholders to the Management Company are a service charge within the meaning of section 18 of the 1985 Act as noted above. As set out at paragraph 41 of the Upper Tribunal's decision, a determination under s.27A of the 1985 Act will involve considering whether the costs incurred by the Management Company (or on its behalf, since for the years in question it would appear that the insurance was procured by E&J Estates, the landlord's agent, rather than by the Management Company as noted above) were reasonably incurred within the meaning of section 18(1)(a). If it was not, the service charge payable by the leaseholders to the Management Company will be limited accordingly. The Upper Tribunal concluded that there is no reason why such a determination should not be available in proceedings to which the landlord is a party even where the service charge is not payable to the landlord.

35. Although the matter has therefore been allowed to proceed, the Respondent sought to emphasise the importance of the structure of the arrangement. In the Respondent's submission, although the Respondent's agent, E&J Estates, had placed the insurance and billed the Management Company for the cost, this did not change the position under the lease. The Respondent maintained, consistent with the Upper Tribunal's analysis, that the charge levied by the Respondent to the Management Company for the insurance is not a service charge within the meaning of section 18 of the 1985 Act – the only service charge is the payment by lessees to the Management Company for their share of the cost of insurance. The implication of this is that the tribunal cannot determine the payability of the insurance costs by the Management Company to the Respondent – and therefore any findings made by the

tribunal, for example as to the reasonableness of the level of costs, can only serve to reduce the liability of the lessees to the Management Company.

36. At the hearing, the Applicants challenged this analysis and sought to argue that there was a direct service charge demand by the Respondent landlord. The Applicants placed reliance on invoices from E&J Estates to the Management Company for the total insurance costs (which would then be billed separately to individual leaseholders). In particular, the Applicants referred to the fact that the invoices contained notices under sections 47 & 48 of the Landlord and Tenant Act 1987. It was argued that notwithstanding that the invoices were addressed to the Management Company, the inclusion of the 1987 Act notices had the effect of elevating or converting the invoices to service charge demands. In essence, it was submitted that the Management Company was no more than a post box and the reality was that service charges were demanded by the Respondent from the lessees. There are a number of difficulties with this argument. First, the Management Company is not a lessee and has no proprietary interest in the buildings or any part of them. Secondly, the reference to sections 47 & 48 of the 1987 Act on the invoices cannot of itself change the relationship between the Respondent and Management Company to that of landlord and tenant. Thirdly, it cannot be said that the Management Company was merely a post box and/or that the Respondent was in effect charging the lessees directly. This would reflect neither the terms of the lease, absent evidence that the step-in rights were exercised, nor the reality. There is no evidence of any charge for insurance levied directly by the Respondent to the lessees. Moreover, the invoices from E&J Estates (on behalf of the landlord) were for the entirety of the insurance costs. They were not apportioned by reference to any lessee's individual costs. As such, we agree with the Respondent's argument that there was a fundamental difference between the invoice from E&J Estates to the Management Company, which could not be a service charge demand for the purposes of the 1985 Act, and demands from the Management Company to individual leaseholders for their proportion of the charges, which were service charge demands.

37. With this in mind, we turn to the two principal areas of dispute.

Has insurance been procured in accordance with the terms of the lease?

38. As set out above, paragraph 7 of Part IV of the lease provides as follows:

> "*The Company will at all times during the said term (unless such insurance shall be vitiated by any act or default of the Lessee) insure and keep insured the Block (including lifts if any) and the contents of the Common Parts* ***in the names of the Lessor the Lessee their mortgagees*** *(according to the respective estates and interests)* ***and the Company*** *against comprehensive risks with an insurance company of repute nominated by the Lessor and through the agency of the Lessor …*". (emphasis added)

39. It is also necessary to have regard to clause 3 of the lease by which the tenant covenants:

> "*in accordance with the said general scheme for the benefit of the Lessor the Company and the lessees of the other flats in the Block the Lessee hereby covenants with the Lessor the Company and the lessees for the time being of the other flats in the Block and with each of them that the Lessee will from time to time and at all times hereafter during said term*:-
>
> …
>
> *(5)(a)(i) Contribute and pay on demand the proportionate part set out in paragraph (i) of Part V off the Schedule hereto of all costs charges and expenses from time to time incurred or to be incurred by the Company in performing and carrying out the obligations and each of them under Part IV of the Schedule hereto as set out in the Notice mentioned in paragraph 11 of part IV …*"

40. On the evidence provided, the Certificates of Insurance provided for Boswell Court & Hitherwood Court both describe the '*Insured*' as 'RMB 102 Limited', '*Joint Insured*' as 'Colindale Hospital Management Limited' and '*Interested Parties*' as 'Rothesay Life Limited' (the Respondent's mortgagee). There is no reference in this part of the Certificate to the lessees. However, towards the bottom of the Certificate under the heading 'Additional Interests' is the following:

> "*Automatically noted - Policy contains "Other Interests" Clause - (Includes Interest of Lessees and Mortgagees). It is agreed that the interest of various lessees, freeholders, mortgagees or debenture holders in this insurance are noted at the request of the Insured. The Insured undertake to declare the names, nature and extent of such interests at the time of the DAMAGE.*

Joint Insured added insofar as is necessary to comply with the terms of any contractual lease agreement the contracting parties and others named therein will be indemnified as Joint Insured by the Insurers as if they were the Insured.

The policy coverage is "All Risks" for material damage for reinstatement of the building and associated professional fees including subsidence & damage to underground services. Coverage includes loss of rent and / or alternative accommodation costs and does not exclude sub- letting. Please confirm with your freeholder that this is not in breach of your lease. You should advise us of any change of use of the building or if the building becomes unoccupied. For full details of Policy covers please refer to the Policy document, a copy of which is available upon request."

41. It should also be noted that the Certificates of Insurance for Boswell Court and Hitherwood Court can be contrasted with Certificates of Insurance for the neighbouring block on the development of Gabriel and Plamer Court, which were included within the hearing bundle. This block was also insured by Zurich. However, on the Certificate of Insurance for 2021-22, for example, the 'Insured' is described as "*Adriatic Land 3 Limited and the lessees of*". In other words, there is express reference to the lessees as being within the category of the 'Insured' for Gabriel & Plamer Court.

42. The Respondent's case is in two parts. First, it is said that the lessees *are* insured under the policy and that the provisions of the lease have in fact been complied with. Alternatively, it is argued that strict compliance is not a condition precedent to the recovery of the service charge in this instance.

43. On the first issue, Mr Wilson's evidence was that the lessees are insured and are able to claim in their own right and that it is in effect a composite policy. It was suggested that it could never be a 'joint' policy because the lessees and the Respondent have different interests. The issue, however, is whether the insurance is in the names of each insofar as that is the requirement of the lease. In this regard, the Respondent points to the 'Additional interests' provision on the Certificates of Insurance. This makes clear that the lessees' interests are noted and that those who must be joint insured in order to comply with the terms of the lease "*will be indemnified as Joint Insured by the Insurers as if they were Insured*".

44. The Respondent's pleaded case was that as a matter of interpretation, it is only required that the lessees be noted on the policy such that their interest be covered under it, not that they be included as joint insured or included on the policy by name. The difficulty with this argument is that it appears on its face contrary to the evidence before us and the provisions of the lease. The Certificates of Insurance do not show that the insurance is "*in the names of …the lessees*" at per paragraph 7 of Part IV of the lease. Indeed, the reference on the Certificates to the lessees' interests being 'noted' and that those who must be joint insured in order to comply with the terms of the lease "*will be indemnified as Joint Insured by the Insurers* ***as if*** *they were Insured*" (emphasis added) demonstrates that the lessees are, by definition, not within the category of 'Insured'. We agree that as a matter of practicality, it would be onerous to list every lessee by name on the policy, particularly as the list may change over the course of the policy as lessees buy and sell flats. However, there does not seem to be any reason why they could not have been listed generically, as had been the case for Gabriel and Plamer Court.

45. This then raises the question as to whether it is sufficient for the lessees' interests merely to be 'noted', given that the lease provides that the policy should be in the 'name of' the lessees as set out above. In this regard, the tribunal was referred to the Upper Tribunal decision in *Brickfield Properties v Georgiades* [2020] UKUT 0118 (LC) in which an argument challenging liability for insurance rent, where the landlord, in breach of covenant, had failed to insure in joint names, was unsuccessful. That decision referenced the earlier Upper Tribunal decision in *Atherton v MB Freeholds Ltd* [2017] UKUT 497 (LC) in light of which the appellant accepted that there was

> "*… a crucial difference between a policy taken out by P, on which Q's interest is "noted", and a policy in the joint names of P and Q, is that in the latter case Q can make its own claim on the policy*" (para.22 of *Brickfield*).

46. Reference was also made to the earlier Upper Tribunal decision in *Green v 180 Archway Road Management Company Ltd* [2012] UKUT 245.

This case was relied on by the Applicants in support of the proposition that to ask whether the insurance would have been sufficient for the lessee had she made a claim was to ask the wrong question: the real issue was whether the obligations under the lease had been complied with. Consistent with this reasoning, at paragraph 31 of *Brickfield*, it was acknowledged that a policy that "*is just as good as one effected in joint names as clause 5(h) requires remains a policy that does not comply with the requirements of that clause*".

47. The Upper Tribunal in *Brickfield* did not need to decide the question of whether the policy in that case complied with the requirements of the lease. However, when faced with similar arguments to those in the present case, the tribunal was unable to conclude on the evidence that the policy was indeed a composite policy as the landlord had contended.

48. Mr Wilson also noted that the insurer has been paying out claims brought by lessees under the policy. While the Applicants accepted that this was indeed the case, it was pointed out that the Certificate also states that the Respondent "*undertake[s] to declare the names, nature and extent of such interests at the time of the DAMAGE*". It was submitted that lessees should not have to bear the risk that the landlord might not do this in any given case – following which there would be the possibility that the insurer might not accept a claim.

49. Ultimately, we are not persuaded by the Respondent's arguments for the reasons set out above. The lease provides that the insurance should be in 'the names of' the lessees. We are not satisfied that the Additional Wording on the Certificates as relied on by the Respondent establishes this. Such conclusion is reinforced when the Certificates of Insurance are compared to those for Gabriel and Plamer Court which specifically refer to the 'lessees' within the category of 'Insured'.

50. Our finding in relation to the first issue, therefore, leads to consideration of the second limb of the Respondent's argument: that strict compliance with the terms of the covenant was not a condition precedent to

payment. The question of whether failure to comply with a particular covenant by the landlord (or Management Company) negates the lessee's liability to pay is a matter of contractual interpretation of the terms of the lease.

51. In support of its submission, the Respondent relies on the Upper Tribunal's decision in *Brickfield Properties v Georgiades* [2020] UKUT 0118 (LC). In that case, the Upper Tribunal refused to imply a term into the lease that compliance with the covenant to insure was a condition precedent to the entitlement to payment.

52. A notable feature of the lease in the *Brickfield* case was that the covenant to pay the service charge did not refer back to compliance with the covenant to insure. In that case, the payment covenant merely provided as follows:

> "*To pay unto the Lessor on demand a sum equal to all such sums as the Lessor may from time to time pay for insuring and keeping insured the demised premises against loss or damage …*"

It did not include words such as "… in accordance with [the obligation to insure] …". As such, it would have been necessary to imply a provision that the obligation to make payment was dependent on compliance with the terms of the covenant to insure. Applying established principles on implied terms, the Upper Tribunal declined to imply such a term into the lease in that case.

53. The position in the present case is slightly different: clause 3(5)(a)(i) of the lease makes specific reference to costs incurred by the Management Company "*in performing and carrying out the obligations*" under the lease. However, does the fact that the payment covenant makes express reference to the [Management Company] performing and carrying out its obligations under the lease mean that if it has not so complied, the costs are not payable? In other words, is compliance with the covenant to insure a condition-precedent to payment?

54. On this question, the Upper Tribunal at paragraph 15 of the decision in *Brickfield* made reference to paragraph 11.018 of *Woodfall: Landlord and Tenant* as follows:

> "*The due performance of one party's covenant may be a condition precedent to the obligation arising upon the other party's covenant, in which case the covenants are said to be dependent. Where covenants are independent, a covenantor cannot set up non-performance of the other party's covenant as a defence to an action upon his own. Dependent covenants may be so expressed as to be mutually dependent, or so that only the covenant of one party constitutes a condition precedent. The modern tendency is to construe covenants as being independent rather than dependent*."

55. The authority for the above proposition was *Yorkbrook Investments Limited v Batten* (1986) 52 P&CR 51. *Yorkbrook*, a case regarding service charges, was cited in *Woodfall: Landlord & Tenant* at paragraph 7.185 as follows:

> "*In the absence of express provision to the contrary, the obligation to provide services is independent of the obligation to pay a service charge, so that arrears of service charge will not entitle the landlord to cease providing services. Thus, where the landlord's obligations were preceded by the words "subject to the lessee paying the maintenance charge pursuant to the obligations under clause 4 hereof …", it was held that payment of the maintenance charge was not a condition precedent to the landlord's liability to provide services. Where the tenant fails to pay service charge the landlord's proper course is not to cease to provide services but to pursue his remedies for the recovery of the arrears*."

56. The Upper Tribunal in *Brickfield* concluded at paragraph 18 as follows:

> "*If the landlord's obligation to provide the service is not conditional upon the tenant's paying for it, even where the words "subject to" are used, we can conclude that very clear words would be needed to make the tenant's obligation to pay for a particular service dependent upon the landlord's compliance to the letter with the detail of clause 5(ii).*"

57. In light of and applying the above analysis, it is not possible to conclude that the lease in the present case contains 'very clear words' that strict compliance with the covenant to insure is a condition-precedent to payment. Although clause 3(5)(a)(i) of the lease in the present case makes reference to the obligations under the lease as set out above, it does not explicitly state that failure to comply with such obligations means that payment is not due. It might be asked, where is a lessee left

as a result of such analysis? In *Brickfield*, it was argued that the lessee's remedy is to claim damages for the breach of covenant or seek specific performance. It might also be argued that insofar as a landlord has procured insurance which is not in accordance with its obligations under the lease, this might be reflected in a section 19 assessment of whether such costs were reasonably incurred. However, for present purposes, the tribunal is unable to conclude that strict compliance with paragraph 7 of part IV of the lease was a condition precedent to recovery. The tribunal therefore declines to hold that no sums are payable as the Applicants contend.

58. A final point to note under this heading is the allegation by the Applicants that the insurance policies and/or their proceeds had been charged or assigned to a third party, namely the Respondent's lender, Rothesay. In the Respondent's submission, this issue is a 'red herring'. According to the Respondent, Rothesay has a charge over the Respondent's property interests and required that charge to extend to the insurance protecting them. It is said that this addresses the position where the Respondent company fails and an insurance event occurs – and so ensures that the lender's security is protected. This is the same reason why lessees' mortgage companies will also require their interests to be noted on the policy. The Notice to Insurer contained in the bundle directs Zurich to pay loss of rent claims to Rothesay. However, the Respondent stresses that this does not impact on the lessees: all the Respondent could ever assign is its own interest under the policy, not the interests of the Applicants. It is therefore denied that the policy is of no value – as demonstrated by the fact that claims by lessees continue to be paid.

59. In light of our finding above that compliance with the covenant to insure was not a condition-precedent to payment, this matter would not have removed the Applicants' liability to pay. However, in any event, we are not satisfied on the evidence that this issue has affected the lessees' interests under the insurance policy or that it has any impact on the principal matters before us.

60. As a postscript, we should add that Mr Douglas's application of 9 March 2025 (post-dating the hearing) included a written submission in which the Applicants made various submissions, which largely repeated points raised during the hearing (although as noted in the accompanying submission, the documentation provided remains inconclusive to the issue). Given that the issues raised did not add to the submissions raised during the hearing, the tribunal did not invite any response from the Respondent as the matters contained in the application did not affect or alter the tribunal's determination

Challenge under section19 of the 1985 Act

61. For the Applicants, the starting point is that the insurance premiums have increased significantly for the service charge years in question compared to what they had been previously.

62. Mr Douglas produced a table showing that the insurance cost per £1,000 of declared value had increased from £2.19 in 2020 to £6.24 in 2021 for Boswell Court and from £2.05 in 2020 to £5.77 in 2021 for Hitherwood Court. In contrast, the insurance costs per £1,000 of declared value for the neighbouring blocks of Conrad Court, Crawford & Penfield Court, Felix Court and Galton & Bailey Court remained around £2 per £1,000 of declared value from 2018 through to 2024. These freehold titles for these four blocks are held by Sinclair Gardens and the blocks were insured by Ecclesiastical. In Mr Douglas's submission, a reasonable sum for insurance would be £2.06 per £1,000 of declared value. This was calculated as the average of the above four properties for the years 2021-2024. It was asserted that this was also consistent with the historical averages for Boswell and Hitherwood Courts.

63. In terms of how this translates to the costs charged, Mr Douglas calculated that the total cost of insurance for Boswell Court and Hitherwood Court for all of the years in question was £1,055,903. Applying a rate of £2.06 per £1,000 of declared value, the maximum that should have been charged to lessees was £389,911 for the two blocks.

This means that there has been an overpayment of £665,992 on Mr Douglas's analysis. The Applicants contend that this latter figure should not be payable.

64. The Respondent's position, relying on the Upper Tribunal decision in *Cos Services v Nicholson* [2017] UKUT 382 (LC), was that it is not necessary to show that the premium incurred was the lowest that could be obtained on the market. Rather, the person recharging the insurance must explain the process by which the policy and premium had been selected, with reference to the steps taken to access the current market.

65. Nevertheless, as noted by the Upper Tribunal, the disparity is striking and calls for an explanation. The Respondent acknowledged in its skeleton that the burden of proof had shifted and that the onus was on the Management Company (discharged by the Respondent) to satisfy the tribunal that the costs were reasonably incurred.

66. Mr Wilson gave evidence as to the steps that had been taken to obtain alternative quotes. His evidence was that the market was fully tested each year, including specifically for the two blocks in question. However, he had found that there has been a hardening of the market and the Respondent has simply been unable to obtain alternative quotes. On the Respondent's case, given that the entire UK insurer market has been approached, both individually and within the block portfolio policy, there is little more that the Respondent could have done. The reality was that the market is not keen to insure the blocks currently and while this might change once remediation works have been carried out, Mr Wilson maintained that there remains a general lack of appetite for residential underwriting.

67. It should be said, however, that the documentary evidence was not quite as clear or definitive as the Respondent contended. In particular, it appears that it was not always apparent from what was sent out to insurers as to whether what was being offered to be quoted on was part of a portfolio of buildings or a standalone building. Mr Wilson stated that had insurers wanted to quote on a standalone basis, they could have done as they would not willingly turn away business. However, it is

apparent from some of the responses from insurers that there was at least the possibility of confusion as to whether they were being invited to provide a stand-alone quote. For example, some responses mentioned the captive arrangement as a reason for not quoting. Another referred to one of the properties on the portfolio ("large mill exposures") as the reason for not quoting – and there does not appear to have been any follow up to make clear that the insurer could have provided a quote just for Boswell Court and/or Hitherwood Court. Other responses suggested that insurers declined to quote because the properties were residential. As to why the Respondent had bothered to approach such insurers given Mr Wilson's knowledge of the market, Mr Wilson's evidence was that such insurers had nevertheless been approached to demonstrate that the exercise had been exhaustive.

68. The Respondent is correct that none of the parties have been able to produce an alternative quote for Boswell Court and Hitherwood Court. Indeed, Mr Douglas accepted that early on he had spoken to Towergate but agreed that it would be difficult to obtain an alternative quote for Boswell Court and Hitherwood Court until the remediation works had been carried out. Nevertheless, Mr Douglas maintained that the other blocks on the development, for which he *did* have the actual costs of insurance, provided good comparables. The buildings are of a similar age and all fall within the definition of 'Higher Risk Buildings' under Part IV of the Building Safety Act 2022. Mr Douglas provided photos for each and a schedule which confirmed that each required panel/framing replacement and had missing cavity barriers. It was also noted that for Hitherwood Court, Conrad Court, Gabriel & Plamer Court and Theodor Court there was timber decking noted but no replacement required. For Galton & Bailey Court and Crawford & Penfield Court, some side panels required replacement. Finally, for Theodor Court, ACM cladding was recorded as being present, yet the insurance premiums were still considerably lower than for Boswell Court and Hitherwood Court.

69. The Respondent sought to play down the significance of the cost of insurance for these other blocks and suggested that they were not useful

comparators. It was also noted that while four of the neighbouring blocks identified by the Applicants were insured by Ecclesiastical (i.e. Conrad Court, Crawford & Penfield Court, Felix Court and Galton & Bailey court), that same insurer had declined to quote for Boswell Court and Hitherwood Court when invited to do so by the Respondent – including when they were marketed outside of the Respondent's block portfolio. As such, it was suggested that the Applicants' submissions did not reflect the reality.

70. While we accept that there is some merit in this argument, we nevertheless take the view that the insurance costs for the neighbouring blocks on the same development provides a stark contrast to the costs for Boswell Court and Hitherwood Court – and one which calls for an explanation as the Upper Tribunal remarked. In this regard, the point can be made that the Respondent's evidence went principally to the question of process. Mr Wilson accepted that he could not explain why such disparity existed between Boswell Court and Hitherwood Court and the other blocks on the development – other than to assert as he did on numerous occasions that the market is simply not interested in this type of block at present and therefore, he was not surprised by the high charges. The point was also made on behalf of the Respondent that the *rate* of increase (as a percentage) was in fact higher for Gabriel and Plamer Court than for Boswell Court and Hitherwood Court – albeit it was starting from a lower point. The *amount* of increase, however, was significantly less in that other block.

71. The Applicants have, understandably, sought to try and find and explanation for the difference and it is clear that Mr Douglas has spent a considerable amount of time in this regard. Two notions that were put forward related to the existence of the captive in the insurance arrangement (something which the lessees had never agreed to) and the nature and/or amount of the 'commissions'. It was accepted that neither could fully explain the disparity, but it was asserted that both provided at least a part of the explanation.

72. With regard to the captive, there is a logic to Mr Wilson's explanation as to why the use of a captive can actually reduce overall costs. Similarly, we do not have evidence which would allow us to conclude that it has been Augustus, rather than Zurich, that has been the true price-setter in the arrangement as the Applicants had contended. On the other hand, it is also the case that some insurers gave the existence of the captive as a reason declining to give a quote. While Mr Wilson suggested that this was an 'easy answer' when the reality was that they simply did not want to quote for the business, it does not appear ever to have been challenged.

73. Turning to the commissions, although the Applicants are correct that insofar as they are expressed as a percentage of the premium, there is no incentive to reduce the premium because a higher premium will result in a higher commission, we do not find that there is evidence to conclude that this has been a cause of the substantial increase in the costs. Indeed, as Mr Wilson stated, the percentage applied has been reduced from almost 10% to 4% since the increase in the overall charges, which has mitigated the overall amount paid. We also accept the Respondent's evidence that such charges were not commissions properly so-called, but rather payments for services which, if not done by PCP, would have had to be done by someone. There was no evidence before us to suggest that they were not genuine and we accept Mr Wilson's evidence on this point. We therefore do not reduce the overall charge by reference to the commissions.

74. The above points were part of a broader challenge by the Applicants suggesting that the nature of the insurance arrangements had given rise to a fiduciary duty. The Applicants submitted that informed consent to the arrangement, and in particular the use of the captive, had never been sought from leaseholders, but was required due to the nature of the insurance arrangements. It was also submitted that the arrangement resulted in a practice of self-dealing and/or secret profits. It was argued that insofar as the Respondent was in breach of a fiduciary duty to the lessees, the cost of insurance could never have been reasonably incurred

for the purposes of the 1985 Act. While we agree with the Applicants that section 19 of the 1985 Act does not operate in a vacuum to the exclusion of the common law, it nevertheless sets out the test that must be applied by the tribunal. The tribunal's concern is whether costs were reasonably incurred. While we do not say that the concepts raised by the Applicants are wholly irrelevant, they are not of themselves, the principal focus of the tribunal's inquiry. In any event, as regards any alleged breach of fiduciary duty, notwithstanding the existence of the captive arrangement, we are not satisfied that it has been demonstrated that for the purposes of these proceedings, this gives rise of a duty beyond that which exists whenever a landlord incurs costs which will ultimately be met by the lessees. This arises in respect of most service charges.

75. Turning to the Applicants' evidence, it is true that the Applicants were unable to provide alternative quotes for Boswell Court and Hitherwood Court and Mr Douglas accepted that this is very difficult to do given that the buildings remain in an unremediated state. However, this means that the only quotes available are for neighbouring properties, albeit on the same development and relating to similar buildings in broadly similar condition.

76. Ultimately, we come back to the fact that the substantial increase in costs for Boswell Court and Hitherwood Court calls for an explanation. Even acknowledging industry-wide difficulties with block insurance over the past few years as alluded to by Mr Wilson, the sums being charged for the two blocks in question are significantly greater than the neighbouring blocks on the same development. We have regard to Mr Wilson's evidence and the attempts to find alternative quotes (although as referred to at paragraph 67 above, the documentary evidence was not always as clear as contended). However, as noted above, the Respondent's evidence was largely concerned with process – on the question of outcome, Mr Wilson was candid that he had no idea why the premiums for Boswell Court and Hitherwood Court were so high. The use of the captive might provide a partial explanation but it is difficult to draw any firm conclusion from the material before us. In our view,

notwithstanding the Respondent's evidence, there is still no, or no adequate, explanation for such high premiums. In the absence of such explanation and in view of the substantial disparity in costs, we therefore conclude that the total costs were not reasonably incurred.

77. This leads on to the question of by how much the costs were not reasonably incurred. As noted above, the Applicants argue for premiums at an average rate of £2.06 per £1,000 of declared value. This would result, on the Applicants' calculation of a total amount payable of £389,911, compared to the sum of £1,055,903 that was actually charged for the service charge years in question. However, the basis of this calculation was challenged by the Respondent. Mr Douglas had taken the average based on the actual insurance costs for four neighbouring blocks on the development: Conrad Court, Crawford & Penfield Court, Felix Court and Galton & Bailey Court. All were insured by Ecclesiastical (the freeholder for each is Sinclair Gardens). However, he had omitted from the calculation two other blocks on the development: Gabriel & Plamer Court and Theodor Court. Both are insured by Zurich but the freeholder for both is Adriatic Land 3. As noted above, in the case of Theodor Court, ACM cladding is present. It was suggested that this would not necessarily increase premiums for Theodor Court because the existence of a waking watch might give the insurer some comfort. However, we did not have clear evidence on this point. It is also apparent that the insurance costs for Theodor Court have increased less than Gabriel & Plamer Court and less than Boswell Court and Hitherwood Court.

78. In our view, to the extent that the cost of insurance for neighbouring blocks on the development provides a useful comparator – and for the reasons given above we agree that it does – this should include all six of the other blocks rather than only the four most favourable to the Applicants. We include Theodor Court on the basis that notwithstanding the presence of ACM cladding, we have not heard evidence as to how this has affected the cost of the premium.

79. Factoring these two blocks into the calculation in addition to the four blocks relied on by the Applicants (using the figures produced by Mr

Douglas at p.369 of the bundle) produces a rate of **£2.17** per £1,000 of declared value. We determine that this rate should be applied for the service charge years in question. Applying Mr Douglas's calculations, this would mean the total premiums payable would be £410,731 for the period as a whole, which would mean that a total sum of £645,172 was not reasonably incurred. The parties are to calculate the appropriate figures per flat based on this determination. If they are unable to reach agreement, they should apply further to the tribunal with their respective calculations.

80. It is stressed, however, that this is a determination of the service charge payable by lessees to the Management Company. As set out above, the sum charged by the Respondent to the Management company is not of itself a service charge – and for the reasons already given, the reference to ss.47 & 48 of the Landlord and Tenant Act 1987 on the invoices from the Respondent to the Management Company do not operate to convert is to a service charge for the purposes of the 1985 Act. The lessees should therefore take advice as to the implications of the tribunal's decision.

Section 20C and paragraph 5A

81. The original application also included claims under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

82. Mr Allison pointed out that under the terms of the lease, it would not be the Respondent (as opposed to the Management Company) that could charge costs in any event. Nevertheless, insofar as such applications are pursued, the following directions are to apply:

    (1) The Applicants must provide any written representations in support of the applications under section 20C/paragraph 5A by **28 May 2025** to the Respondent and the tribunal;

    (2) The Respondent may respond by **18 June 2025**;

    (3) The Applicants may serve a brief reply by **2 July 2025**;

(4) By the same date (2 July 2025), the parties should notify the tribunal whether they wish for the applications under section 20C/paragraph 5A to be determined on the papers or whether they wish for there to be a hearing.

Name: Judge Sheftel **Date:** 9 April 2025

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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).

Annex

List of leaseholders added as Applicants as referred to in paragraph 11 above:

Scott Mitchell	02 Hitherwood Court
Amber Erin Nissim	03 Hitherwood Court
Sachin Mehta	09 Hitherwood Court
Amisa Patel	10 Hitherwood Court
Leila Felicio	11 Hitherwood Court
Lauren Druce	14 Hitherwood Court
Carles Jimenez Soguero / Arsalan Kamal	15 Hitherwood Court
Joao Morais	17 Hitherwood Court
Liping Ma	19 Hitherwood Court
Suzanne Brower	23 Hitherwood Court
Yana Greenwood	29 Hitherwood Court
Ky Tran	33 Hitherwood Court
Xunxun Wang	38 Hitherwood Court
Carmen Locay Arza	47 Hitherwood Court
Michael Hughes	49 Hitherwood Court
Luke Hands	51 Hitherwood Court
Chukwuma Uduku	53 Hitherwood Court
Omar Soufi	57 Hitherwood Court
Amber Erin Nissim	65 Hitherwood Court
Ben David	73 Hitherwood Court
Jonathan Kay	79 Hitherwood Court
Dr Mohammad Khalid	80 Hitherwood Court
Ijeabalum Onwuamaegbu	08 Boswell Court
Tariq Gamei	16 Boswell Court
Alnawaz Fazal	26 Boswell Court
Tanya Paulose	36 Boswell Court
Joachim Chan	37 Boswell Court
Wilma Arkhurst	40 Boswell Court
Katie Allen	46 Boswell Court